

# Negotiating sickness absence agreements

A guide for UNISON branches  
Revised March 2023



## NEGOTIATING SICKNESS ABSENCE AGREEMENTS

- Fair sickness absence policies, aimed at supporting staff recovering from illness or injury, are a key part of creating a healthy workplace. This guide is designed to help branches take a proactive approach to making the case for improved arrangements and defend sickness absence policies against attempts by employers to impose punitive arrangement and downgrade terms.
- It structures the crucial negotiation points across the six main steps set out below and offers a checklist of actions at the end of each negotiating section.
- Finally, the guide provides two model documents as possible templates for local adjustment - a model staff survey designed to assist in strengthening a bargaining position and a model agreement as a target for negotiation [For a Word copy of these documents, contact Bargaining Support via [bsg@unison.co.uk](mailto:bsg@unison.co.uk)]

The specific considerations for all Covid-19 related sickness absence issues are set out separately in these UNISON bargaining guides:

[Living alongside COVID-19: workplace issues](#)

[Bargaining to support those at higher risk from COVID-19](#)

[Bargaining to support those with long COVID or post-COVID-19 syndrome](#)

Alongside further guidance found at <https://www.unison.org.uk/bargaining-guides/>

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# 1 Understanding sickness absence norms and composition

## 1.1 Absence norms

Frequently, the initiative to review sickness absence arrangements can come from an employer asserting that the levels of sickness absence are excessive.

It is important to counter that high sickness absence levels are often a symptom of unhealthy working and the key to reducing absence is to tackle the underlying causes of ill health. However it may also be necessary to challenge myths over high levels of absence, by drawing on sources that provide an estimate of average rates at national, local or sectoral levels.

The last annual Office for National Statistics survey of sickness absence in the UK labour market found that the general rate had climbed to 2.2%, or 4.6 days per worker, in 2021- a year heavily affected by the Covid-19 pandemic.

By sector it found the public sector average was 3%, or 6.4 day per worker, while the private sector average was 1.9% or 4.1 days per worker<sup>1</sup>.

Across UNISON's major bargaining groups, the NHS publishes the highest level of detail on sickness absence rates. Its monthly updates, carried on the link below, show rates by occupation, region, organisational type and trust.

<https://digital.nhs.uk/data-and-information/publications/statistical/nhs-sickness-absence-rates>

Sources can also be available for certain other sectors where UNISON represents members. For instance, Skills for Care publishes rates for the adult social care workforce in England on the link below.

<https://www.skillsforcare.org.uk/adult-social-care-workforce-data/Workforce-intelligence/publications/national-information/The-state-of-the-adult-social-care-sector-and-workforce-in-England.aspx>

However, if you are looking for assistance in uncovering whether there are any rates available as benchmarks for the staff you are representing, please contact UNISON's Bargaining Support Group via [bsg@unison.co.uk](mailto:bsg@unison.co.uk)

## 1.2 The public / private myth

Differences between public and private sector absence rates are often exploited in an attempt to try to paint the public sector in a negative light.

One of the key issues ignored in crude comparisons between sickness absence in the public and private sector is the size of the organisation. Absence rates vary dramatically by size, with small organisations (employing 25 staff or less) recording an average of 3.6 days lost per year, compared to larger organisations (employing 500 staff or more) recording an average of 5.8 days lost per year. This applies to large private sector organisations in comparison to small private sector organisations as much as it does to the public sector. However, because the public sector is made up of many more large organisations (around 90% of all public sector organisations employ 500 staff or more, while less than half of private sector organisations are of this size) the issue is often presented as if it is a "public sector problem."

Alongside the issue of organisational size, the public sector also contains a large proportion of occupations that suffer higher absence rates because of their impact on health, most notably health service jobs where staff are exposed to the risk of infection, as well as high levels of physical and mental stress.

A further factor that has been gaining pace over the last decade is the rise of insecure employment contracts, which are particularly heavily concentrated in the private sector.

<sup>1</sup> Office for National Statistics, Sickness Absence in the UK Labour Market, April 2022

Employment practices such as zero hours contracts hand the employer the power to simply stop offering hours when a member of staff is ill, so time that would be recorded as sickness absence under a standard contract does not show up as sickness when these working arrangements are introduced.

### 1.3 Composition

Sickness absence is frequently split into short and long-term forms. The Office for National Statistics estimates that around 60% of days lost to sickness absence relate to staff with long-term health conditions.

In 2021 a survey by the Chartered Institute of Personnel and Development (CIPD)<sup>2</sup> found that the most common factors in the top three most common causes of short-term absence were reported as follows:

- 84% minor illness (such as cold, flu, stomach upset, headaches and migraines);
- 67% Covid-19 (including confirmed cases, self-isolation, quarantine, shielding);
- 34% musculoskeletal injuries (such as neck strain, repetitive strain injury, back pain);
- 32% mental ill health (eg clinical depression and anxiety);
- 30% stress;

When asked what factors were in their top three most common causes of long-term absence, organisations responded as follows:

- 57% mental ill health;
- 46% musculoskeletal injuries;
- 38% stress;
- 37% acute medical condition (eg stroke, heart attack and cancer);
- 26% Long COVID (symptoms from COVID lasting at least 12 weeks).

When asked to list the top three causes of stress-related absence, organisations responded as follows:

- 60% workloads / volume of work;
- 27% non-work factors (eg relationships and family);
- 26% management style;
- 25% non-work factors (eg personal illness/ health issue).

Statistics show that certain groups are more likely to be absent through sickness.

Unsurprisingly, rates vary markedly by age - absence rates for 16-24-year-olds are almost half those for 50-64-year-olds. Studies have found that “long-term conditions are more prevalent in older people (58 per cent of people over 60 compared to 14 per cent under 40) and in more deprived groups (people in the poorest social class have a 60 per cent higher prevalence than those in the richest social class and 30 per cent more severity of disease).”

Sickness rates also tend to be higher for women, though these figures may well be influenced by inappropriate classification of absence that is dealt with later in this guide.

### 1.4 Presenteeism and leaveism

While sickness absence rates have been in decline over recent years, the phenomenon of “presenteeism” has been on the rise.

Presenteeism means the attendance of staff at work when they are ill and the CIPD has found that 86% of employers report this occurring in their organisation. Other studies have also suggested that presenteeism results in 1.5 days lost due to presenteeism for every day lost due to absenteeism. This reinforces the argument that a punitive approach to sickness absence may actually reduce productivity, rather than increase it.

Alongside presenteeism, there has been growing appreciation of “leaveism,” which refers to staff using up their leave entitlement when

they are actually too ill to attend work.

The trend toward more home and hybrid working that emerged during the Covid-19 pandemic (and looks like becoming a permanent feature of working patterns for many workers) have resulted in 30% of remote workers reporting working more unpaid hours than before the pandemic. Similarly, 67% of employers found 'leaveism' was a significant issue<sup>3</sup>.

The CIPD states that "the findings suggest that many organisations haven't been taking effective action to combat the risks of an 'always on' culture during the pandemic. Boundaries between work and home life have become increasingly blurred for many people working from home for example, making it difficult for people to switch off."

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<sup>3</sup> CIPD/Simplifyhealth Health and Wellbeing at Work Survey, 2022

## 2 Making the case and agreeing principles for a review

While a defensive reaction to an employer attack may be forced on the union, the case in favour of reviewing sickness absence policies can be made in far more positive terms.

Key to this is convincing the employer that such steps are not only in the interest of their staff but also in the interests of the organisation.

The costs of sickness absence are immense, as ill health among working age people is estimated to cost the economy £100 billion a year<sup>4</sup>.

A CIPD survey in 2021 found that among those employers that had invested in health and well-being policies, the benefits were as follows:

- 48% of employers reported a healthier and more inclusive culture;
- 46% of employers reported better employee morale and engagement;
- 43% of employers reported better work-life balance;
- 33% of employers reported more effective working relationships;
- 27% of employers reported improved productivity;
- 26% of employers reported reduced work-related stress;
- 25% of employers reported lower sickness absence rates;
- 24% of employers reported improved staff retention.

Similarly, PriceWaterhouseCoopers found considerable evidence from a thorough review of 55 UK-based case studies that health and well-being programmes have a positive impact on sickness absence, staff turnover, accidents and injuries, employee satisfaction and productivity. In the case of sickness absence, 45 of the 55 case studies uncovered improvements resulting from the well-being programme<sup>5</sup>.

However, these are of course very broad brush

figures, so a workplace survey (a template is set out in appendix 1) can provide figures and views that could trigger greater concern for the employer.

To head off the danger of an employer responding to the costs of sickness absence with a punitive approach to drive costs down, it is important to enshrine some key principles in the approach to be taken.

Sickness absence policies should be framed in terms of:

- Organising the workplace in a way that places staff health centre stage by reducing the stresses and dangers that can cause sickness in the first place;
- Taking a proactive approach to detecting and tackling the underlying causes of work-related absence;
- Offering comprehensive support and adjustments to those who nonetheless are absent through sickness or due to an impairment and maximising assistance to achieve a return to health and / or work;

Many organisations can put fine words down on a piece of paper displaying all these principles, but in reality a management culture persists characterised by scepticism about how genuine sickness is, indifference to the impact of organisational practices on health, an unsympathetic approach to workers experiencing illness or who are disabled and pressurising of people into a return to work before they are ready or without the adjustments they need.

Therefore, these principles have to be accompanied by a genuine commitment to carry them through into management training that puts them into practice.

In addition to the principles that should run through a sickness absence policy, agreement

<sup>4</sup> Department for Work and Pensions, Work, Health and Disability Green Paper Data Pack, 2016

<sup>5</sup> PriceWaterhouseCoopers, Building the Case for Wellness, 2008

should be established up-front on the involvement of the union in regular meetings to shape policy throughout the review.

### **Action checklist 1**

- *Challenge any move to review sickness absence arrangements driven by claims that rates are “excessive” by drawing on evidence of norms where advantageous.*
- *Set out to an employer the evidence of benefits to an organisation of investing in health and well-being policies.*
- *Agree principles of sickness absence management built on prevention and support that are carried through into management training.*
- *Agree union involvement in shaping policies throughout the period of a review.*



### 3 Negotiating policies to pre-empt sickness absence

In response to the 2011 Black/Frost report, *Health at Work: An Independent Review of Sickness Absence in Great Britain*, the Institution of Occupational Safety and Health rightly observed that, “if employers focus on absence management, they will only be managing cases of illness. Instead, they need to make the connection between an effective wellbeing programme and the health of their business.”

With this in mind, the first step in any review of sickness absence should be to take stock of what action is being taken to deliver a healthy and safe workplace that minimises the workplace causes of sickness absence.

Of course, this isn't an entirely voluntary matter for an employer, as managing sickness absence is part of the employer's duty to manage the health & safety of their workers. The legal regulations that set the baseline for workplace arrangements are as follows:

- The Health and Safety at Work Act 1974 and the Health and Safety at Work (Northern Ireland) Order 1978 place a general duty on the employer to secure the health, safety and welfare of their employees as far as reasonably practicable.
- The Management of Health and Safety at Work 1999 and Management of Health and Safety at Work (Northern Ireland) 2000 regulations require employers to assess the risks of ill health arising from work-related activities, ensure that hazards are removed, or proper control measures are in place to reduce the risk so far as is reasonably practical. Under these regulations, safety reps have the right to be consulted on who carries out risk assessments and any changes that affect health and safety of their members.
- The Safety Representatives and Safety Committee 1977 and Safety Representatives and Safety Committee (Northern Ireland)

1979 regulations state that safety reps of a recognised trade union have the right to be consulted in good time by their employer, and represent members on any matters that might substantially affect their health, safety or welfare. These regulations also give safety reps paid time off to fulfil these functions, with the right to investigate health and safety matters, the right to the provision of health and safety related information held by the employer and the right to inspect the workplace at least four times each year.

- The Health and Safety (Consultation with Employees) 1996 and Health and Safety (Consultation with Employees) (Northern Ireland) 1996 regulations require that where members are working for an employer that does not recognise trade unions, employers still have to consult them on matters affecting their health and safety.
- Under the Control of Substances Hazardous to Health Regulations 2002 (COSHH) exposure to certain hazards requires the employer to carry out health surveillance to protect the employees health and detect any adverse effects as soon as possible.

However, turning these rights into reality and building on them to deliver a workplace that truly minimises drivers of sickness absence will mainly pivot around implementation of the following:

- A programme of risk assessment across the organisation that provides a regular systematic sweep of operations and responds to individual cases as they arise. UNISON's risk assessment guidance goes through the Health and Safety Executive's recommended five steps to reach effective action that addresses risks and is available [here](#).
- A great deal of sickness absence is related to stress in the workplace, frequently as a product of escalating workloads. Therefore,

risk assessment should be supplemented by regular assessment of the workplace in terms of the HSE Stress Management Standards. UNISON's Stress Toolkit goes through the process and is available [here](#).

- Employers should be pressed to systematically collect and analyse information on the scale and causes of sickness absence, broken down into detail that shows if particular groups within the workforce are affected. Where required under COSHH, anonymised data on the results of health surveillance and accident data can supplement the information. This data can be used in tandem with risk assessments and the stress management standards to identify where the need for action is most acute.

Alongside the regulations on health and safety, equality legislation also sets the baseline for a proactive approach to ensuring that sickness absence is pre-empted for particular groups within the workforce.

- The Equality Act 2010 requires that an employer in England, Scotland and Wales eliminates direct and indirect discrimination against staff with a protected characteristic - age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- The Public Sector Equality Duty places an obligation on most public authorities (which they must also enforce among any contractors) to:
  - Eliminate discrimination;
  - Advance equality of opportunity;
  - Foster good relations between different people when carrying out their activities.
- In Northern Ireland, Section 75 of the Northern Ireland Act 1998 places a statutory obligation on public authorities to have due regard to the need to promote equality of opportunity. The Disability Discrimination Act (DDA) 1995 requires public authorities

to have due regard to the need to promote positive attitudes towards disabled people and encourage the participation of disabled people in public life.

The main way in which this legislation is liable to impact on the shaping of a policy designed to pre-empt sickness absence is in the field of disability. Under both British and Northern Ireland legislation, employers are required to make “reasonable adjustments” for disabled staff which enables an employee to attend work. However, any form of discrimination can be a trigger for sickness absence, as can any form of bullying or harassment.

To turn these rights into reality and ensure that a sickness absence policy pre-empt the issues that staff with protected characteristics may face, the following steps are liable to be crucial:

- Staff should be encouraged to tell their employer if they are a disabled person, as the right to reasonable adjustments cannot be enforced unless the employer knows the worker is disabled. To achieve this, staff should be given the opportunity to share this information through regular planned meetings with managers, an open-door policy for staff to raise the issue and an alternative avenue for staff to hold discussions with a senior figure other than their direct line manager. These management practices should be accompanied by a communications programme that highlights the range of impairments and conditions that may be covered by the protections in equality legislation (including those related to mental health), the supportive approach with which the organisation will treat staff telling the employer that they are disabled and the assurance that all discussions will be treated confidentially.
- In cases of contention over whether an employee is disabled and protected by equality legislation, reps can refer to UNISON's comprehensive Proving Disability and Reasonable Adjustments guide and

employers should be open to the full range of reasonable adjustments that this guide suggests for each condition or impairment. The guide is available [here](#).

- In cases of contention over whether an adjustment is reasonable, the judgement will depend on:
  - Whether the adjustment could reasonably be expected to work;
  - How much it would cost compared to the employer's financial and other resources;
  - The disruption it may cause;
  - The availability to the employer of financial or other assistance to help make an adjustment happen (such as support through Access to Work);
  - The type and size of the employer.

Employers should be pressed to commit to highlighting the Access to Work service available to employees as a source for workplace adaptations, as well as co-operating with any proposals that come forward from the service for specialist equipment, adaptations to equipment, fares to work if an employee cannot use public transport or a support worker / job coach to help in the workplace. The Access to Work programme is available in England, Scotland and Wales and details of how to apply are available [here](#). The range of support available in Northern Ireland is set out [here](#).

- However, employers should be pressed to widen their legal obligation to make reasonable adjustments and deploy the same management approach to exploring with staff the workplace factors that contribute to their sickness absence with a view to making tailored adjustments. An outline of adjustments that should form a standard set of options is available in section 6.4 of this guide. These adjustments include the classification of absence as disability leave.
- In order to get adjustments in place before problems start to manifest themselves in sickness absence, management training

should incorporate the spotting of early warning signs in staff behaviour, developing the skills to handle sensitive conversations and the necessity for timely implementation or adjustment requests.

- Establishment of reasonable adjustment passports to record agreed changes mean that disabled people do not have to explain their requirements every time their line manager changes or they change roles within their organisation.
- Employers should be encouraged to review their policies on discrimination, violence, harassment and bullying at work, particularly in relation to how they can deal more effectively with specific incidents that have occurred or concerns raised by staff.

A further dimension in the pre-emption of sickness absence can lie in considering what services the organisation offers for checking and maintaining health.

The 2021 CIPD survey found that the most common forms of health related services provided by employers were as follows:

#### **Health promotion**

- 68% provided paid time off to attend vaccinations;
- 63% provided free eye tests (a legal requirement for any employee who uses computer equipment);
- 48% provided free flu vaccinations;
- 46% offered health advice services;
- 30% provided an in-house gym or subsidised gym membership;
- 23% offered access to health screening services;

#### **Employee support**

- 73% offered access to counselling services;
- 72% had an employee assistance programme;
- 33% offered access to financial education;

- 29% offered access to physiotherapy and other therapies;
- 22% provided access to services designed to assist staff in stopping smoking

### **Action checklist 2**

*To achieve a proactive approach to pre-empting sickness absence, press for the following commitments from employers:*

- *A systematic programme of regular risk assessment, evaluation against HSE management standards and analysis of accident data, any health surveillance required under COSHH and sickness patterns (including the reasons for absence and scale of presenteeism / leaveism).*
- *A management policy that maximises the opportunity for disclosure of disability built around regular individual meetings with staff, an alternative avenue for staff outside of immediate line managers, and a supportive communication programme that guarantees confidentiality.*
- *An agreed though flexible initial range of workplace modifications to be considered for assisting staff, in addition to reasonable adjustment policy and co-operation with any proposals arising from the Access to Work service.*
- *Agreement to consider tailored adjustments wherever staff highlight factors that contribute toward sickness absence, even where a strict definition of disability does not apply.*
- *A Disability Leave policy – see UNISON’s bargaining guide [here](#)*
- *A review of the organisation’s approach to handling of discrimination, violence, harassment and bullying at work.*
- *Consideration of services that the organisation can provide for checking, maintaining and promoting good health.*

## 4 Negotiating over the rate and duration of sick pay

### 4.1 Specification

The Employment Rights Act (1996) in Britain and Employment Rights (Northern Ireland) Order 1996 in Northern Ireland require that terms and conditions for sickness absence arrangements must either be set out in a single document such as a “written contract of employment,” a “statement of the main terms and conditions of employment” or in another readily accessible document (such as a sickness absence agreement) that is referred to in the contract or statement.

Part-time workers are entitled to the same sickness absence arrangements as full-time staff. Fixed-term staff are entitled to an overall package of the same value as permanent staff, though the individual terms of their sickness absence policy can differ.

### 4.2 Statutory sick pay

By law, employers have to provide pay during sickness absence for the duration and level specified by Statutory Sick Pay (SSP). SSP rises from £99.35 to £109.40 from 6 April 2023. It is payable from the fourth day of sickness absence for up to 28 week.

To qualify, a member of staff has to be classified as an employee and earn an average of at least £123 per week. The government’s definition of employment status is set out [here](#).

Agency workers are entitled to SSP, but any member of staff classified as a “worker”, such as many staff on zero hours contracts, are excluded. Term time workers are not entitled during term breaks if they have no contract outside term times, but are entitled if their contract covers both term and non-term time.

To qualify, a member of staff also has to meet certain notification requirements. The employee must notify their employer that they are sick before any organisation’s deadline - or within seven days of falling sick if they do not have one.

The standard self certification form for SSP purposes is set out [here](#) - though employers usually provide their own version of this form.

A doctor’s fit note has to be lodged with the employer if sickness extends for more than seven days in a row (including non-working days).

The first three days of sickness are called “waiting days.” However, if a worker has received SSP within the previous eight weeks, they do not have to go through a further three waiting days to receive SSP again.

Linked periods of sickness, covering absence of four days or more each, that are eight weeks or less apart, no longer qualify after more than three years.

SSP is paid according to the same pattern as an employee’s normal wages (for example, weekly or monthly), with tax and National Insurance deducted.

An employee is not entitled to SSP if they are receiving Statutory Maternity Pay.

When entitlement to SSP is coming to a close or a member of staff is not eligible for SSP, the available income support options are Universal Credit or Employment and Support Allowance (ESA). Employers must forward form SSP1 to staff in these situations. Click [here](#) for form.

An appeal to HMRC over refusal to pay SSP can be made within six months of the refusal date.

### 4.3 Occupational sick pay

However, SSP is the legal minimum. Almost all public sector organisations provide occupational sick pay schemes that deliver benefits above the baseline provided by SSP.

In bargaining to achieve the best terms possible for an occupational sick pay scheme, it may be useful to utilise the benchmarks below as targets or reference points for the duration and rate.

Across the public sector as a whole, the median and best terms achieved on appointment (where schemes offer immediate entitlement), after one year and after five years are set out below.

<b>On appointment</b>
Median terms - Four weeks full pay and nine weeks half pay.
Best terms – Some central government organisations are entitled to 26 weeks on full pay and 26 weeks on half pay.
<b>After one year</b>
Median terms - Nine weeks full pay and nine weeks half pay
Best terms - 26 weeks full pay and 26 half pay
<b>After five years</b>
Median and best terms - 26 full pay and 26 weeks half pay

Source: Labour Research Department and UNISON Bargaining Agreements Database

Across the private sector, the median and best terms achieved on appointment (where schemes offer immediate entitlement), after one year and after five years are set out below<sup>6</sup>.

<b>On appointment</b>
Median terms – Four-and-a-half weeks full pay and two weeks half pay
Best terms 24 weeks on full pay
<b>After one year</b>
Median terms - 8,5 weeks full pay and 9 weeks half pay
Best terms -52 weeks on full pay
<b>After five years</b>
Median and best terms - 26 full pay and 26 weeks half pay
Best terms -52 weeks on full pay

Source: Labour Research Department and UNISON Bargaining Agreements Database

<sup>6</sup> Private sector schemes that apply solely to manual workers are excluded from the figures shown

Across the largest bargaining groups where UNISON membership is concentrated, the terms of nationally agreed schemes are very similar, as set out below.

Bargaining Group	Qualifying period of service	Full Pay	Half Pay
<b>Agenda for Change</b>	On appointment	1 month	2 months
	1 year	2 months	2 months
	2 years	4 months	4 months
	3 years	5 months	5 months
	5 years	6 months	6 months
<b>Local Government (England, Wales and Northern Ireland)</b> <b>Police Staff (England and Wales )</b> <b>Probation Staff</b> <b>Further Education Colleges</b> <b>Sixth Form Colleges</b>	On appointment	1 month	0 months
	4 months	1 month	2 months
	1 year	2 months	2 months
	2 years	4 months	4 months
	3 years	5 months	5 months
<b>Local Government (Scotland)</b>	On appointment	0 months	0 months
	26 weeks	5 weeks	5 weeks
	1 year	9 weeks	9 weeks
	2 years	18 weeks	18 weeks
	3 years	22 weeks	22 weeks
	5 years	26 weeks	26 weeks

These are generally recommended rates from the national negotiating body that allow local organisations to make amendments to rates.

In outsourced public services, the terms of the relevant sector will often form a useful reference point for negotiations over sickness absence schemes.

If you are after examples of sick pay arrangements for organisations within a particular sector, contact the Bargaining Support Group on [bsg@unison.co.uk](mailto:bsg@unison.co.uk)

As most occupational schemes start from day one, self certification is normally required from that moment.

As reflected in the table above, most public sector sick pay schemes stage improvements in terms over five years. This is in line with the Equality Act 2010, which specifies that benefits staged over a longer scale have to be justifiable on the basis that they fulfil a business need, such as encouraging loyalty or rewarding higher levels of experience.

### Action checklist 3

- *Ensure legal specifications are observed for the clear spelling out of sickness absence arrangements in a written contract of employment, a statement of the main terms and conditions of employment or in another readily accessible document that is referred to in the contract or statement.*
- *Where an occupational sick pay scheme does not apply, ensure the basic legal entitlements of SSP are observed for those eligible.*
- *Target the best conditions achieved among public sector occupational schemes or at least hold to median rate and duration of entitlement.*
- *Press for the scheme to apply as widely as possible across all types of staff.*

## 5 Negotiating over classification of sickness absence

Sickness absence agreements should carry specific exclusions of forms of absence that cannot be treated as sickness by law and forms of absence, for the avoidance of confusion, that are sometimes mistakenly mixed with sickness.

Any employer that takes some form of disciplinary action against staff by classifying absence due to pregnancy related illness or disability as sickness absence leaves themselves open to the possibility that they may face discrimination claims.

In the case of pregnancy, it is good practice for any related sickness to be recorded separately up to the fourth week before the expected week of childbirth, when the employer then has the right to ask for maternity leave to begin. The separation of leave for pregnancy related reasons also extends to miscarriage (further details are available in [UNISON's Negotiating for Working Parents Guide](#)).

In the case of disability, the EHRC Code of Practice states that “although employers are not automatically obliged to disregard all disability-related sickness absences, they must disregard some or all of the absences by way of an adjustment if this is reasonable. If an employer takes action against a disabled worker for disability-related sickness absence, this may amount to discrimination arising from disability.” This is a statutory guide for employers and is the authoritative, comprehensive and technical guide to the detail of law (further details are available in [UNISON's Disability Leave Guide](#)) and should be used when negotiating policies over disability related absence.

In the case of gender reassignment under medical supervision, branches should also seek exclusion from classification as sickness absence. Gender reassignment treatment should not be regarded as elective or cosmetic. There should be an appreciation that trans people are a diverse group and there is no one ‘correct’ way to transition. Accessing NHS

gender identity services requires diagnosis by a specialist and may take months or years.

UNISON should also make the case for sickness absence related to the menopause to be excluded from sickness records (further details are available in [UNISON's Menopause Guide](#)) on the basis that it can particularly disadvantage older women in the workplace.

Work related injury or illness should be recorded separately in the organisation's accident book. Serious incidents (including those that result in more than even days off work in England, Wales and Scotland and more than three days off in Northern Ireland) have to be reported to the Health and Safety Executive under the RIDDOR regulations and though the employee is only required by law to pay SSP for any resulting period of absence, it is not uncommon for an employer to top up the payment to normal pay rates.

Absence relating to injury in the workplace or ill health caused by work can include issues such as sharps injuries, violent assault or even diarrhoea and vomiting resulting from infection, despite following workplace infection policies in sectors such as the NHS, social care or catering.

Care should also be taken that absence due to attendance at medical appointments, caring for family or in response to bereavement are not mixed up with sickness absence. All these issues should be dealt with under separate policies which set specific leave entitlement for the purpose. A case can be made that all these entitlements are part of a healthy workplace approach which puts the avoidance of stresses that can cause sickness absence ahead of a short-sighted, penny-pinching approach.

More details are available in UNISON's guides on [Bargaining for Carers](#) and [Bargaining on Leave](#).

UNISON's guidance on medical appointments recommends that the following forms of check-



ups and treatment are included in full paid entitlement:

- GP, dentist, optician and hospital appointments;
- Tests and check-ups including eye tests;
- Health screenings (such as cervical screening, mammographic screening and prostate cancer screening etc);
- IVF (In Vitro Fertilisation) and other fertility treatments;
- Gender reassignment treatment;
- Rehabilitation and on-going treatment of long-term health conditions.

Finally, infectious disease, where there is medical advice that someone remains off work longer than they are sick, should be classified as medical exclusion with pay rather than sickness absence.

Alongside all the forms of absence that should not be classified as sickness, it is worth noting that certain forms of contract lead to the exclusion of periods when staff are in reality sick. Contracts on a zero hours or bogus self employment basis are vulnerable to employers simply not offering work when someone is sick, which means that periods that would be recorded as sickness absence on any standard contract are avoided in such cases (UNISON's full guidance on negotiating over contract types is available [here](#)). The injustice of this situation should be used as a further argument against the use of such contracts.

#### Action checklist 4

Make the case for exclusion from sickness absence records of the following forms of non-attendance at work:

Disability-related leave

Pregnancy-related illness

Work-related injury or illness

Gender reassignment under medical supervision

Related to menopause symptoms

Medical exclusion

Ensure that there is no mixing up of entitlements that should be clearly set out separately for:

Attendance at medical appointments

Caring for family or in response to bereavement

If there are an appreciable number of workers employed on the basis of short term offers of employment, such as zero hours workers, consider making the case against the use of such contracts on the basis that they often cheat workers of the sickness pay to which they should be entitled.

#### **Action checklist 4**

- *Make the case for exclusion from sickness absence records of the following forms of non-attendance at work:*
  - Disability-related leave
  - Pregnancy-related illness
  - Work-related injury or illness
  - Gender reassignment under medical supervision
  - Related to menopause symptoms
  - Medical exclusion
- *Ensure that there is no mixing up of entitlements that should be clearly set out separately for:*
  - Attendance at medical appointments
  - Caring for family or in response to bereavement
- *If there are an appreciable number of workers employed on the basis of short term offers of employment, such as zero hours workers, consider making the case against the use of such contracts on the basis that they often cheat workers of the sickness pay to which they should be entitled.*

### **Case study - Norfolk and Norwich University Hospitals**

*UNISON played a leading role with other unions at Norfolk and Norwich University Hospitals NHS Foundation Trust in working extensively with the employer to develop a new sickness absence policy in 2016 built around some clearly defined principles.*

*Guidance was developed to help managers at every stage of the process, with the first step focusing on what managers “could do to keep someone at work.” Advice laid out to achieve this goal recommended the following approach:*

- *Know your staff*
- *Use your discretion*
- *Be approachable*
- *Be flexible*
- *Be innovative*
- *Consider tailored adjustments*

*However, even the best healthy environment cannot avoid sickness absence entirely, so when a member of staff is absent, the policy encourages managers to take action within the first week built around the FOCUS checklist:*

- **F**irst week is crucial – remember that if a member of staff is sick for more than seven days, this usually turns into an absence of between one and three months
- **O**rganise – plan and prepare for intervention
- **C**onversation – any discussion is likely to be better than none
- **U**nderstand – their perspective including the reason for the absence. How are you going to make them feel? How would you want to be treated?
- **S**upport – how may you assist with a return to work?

*Under the policy, managers are required to refer to the workplace health and well-being service as soon as appropriate but no later than 28 days.*

*Finally, the policy leaves managers with a striking quote from US poet and civil rights activist Maya Angelou - “At the end of the day, people won’t remember what you said or did ... they will remember how you made them feel.”*

*The result of the new policy has been an 11% decline in sickness absence over 12 months, which equates to 27 extra staff available every day. The number of staff with absences lasting four days or more has declined by 14% and the number of staff recording no absence at all has risen.*

## 6 Negotiating over sickness absence procedures

While the baseline level and duration of sick pay are often set out in national agreements on terms and conditions across much of the public sector, the details of sickness absence procedures are usually minimally defined. With those terms left to local agreement, this section runs through all the key procedural dimensions for negotiation.

Each step tends to cover the necessity for meetings or discussions between managers and staff, and agreements should explicitly recognise the right of staff to trade union accompaniment in formal meetings and commit to no unreasonable refusal to accompaniment in informal meetings.

### 6.1 Negotiating over notification

Sickness absence procedures should set out a clear set of notification steps for staff to follow when they are not well enough to attend work.

Those procedures should specify:

- Who to notify;
- The acceptable forms of notification;
- By what time notification must be completed.

The worker would normally be expected to explain briefly the reason for their absence and, if possible, approximately how long they will be off for.

However, a worker should not be intimidated by this process. A simple explanation of absence should not become an interrogation on the employee's symptoms, nor should it result in a worker feeling pressured to return to work before they are fit to do so.

Furthermore, in cases of severe ill health procedures should allow a friend or relative to report absence rather than the member of staff affected.

In some organisations, notification does not go through the line manager, but instead specifies somebody else within the organisation or an external organisation.

Some workers may prefer to speak to a third party and find it less intimidating than reporting to their manager. However, such arrangements may also risk undermining the personal relationship between a manager and their staff, the employer's duty to look after the health and welfare of their worker and the reliability of information.

Care should be taken to avoid excessive penalties for missing notification procedures. For instance, a case came to light in 2018 that a healthcare provider was imposing a £50 charge on employees who called in sick without giving 24 hours' notice.

As noted earlier, self-certification forms have to be submitted from the first day that sick pay becomes due. When a worker has been off for more than seven consecutive days (this includes non-working days) they must provide their employer with a doctor's "fit note". The GP will complete the "fit note" indicating via a system of tick boxes whether the worker is:

- Not fit for work
- May be fit for work taking on the basis of one of the following steps:
  - A phased return to work
  - Altered hours
  - Amended duties
  - Workplace adaptations.

The GP can then give additional comments on the effect the patient's condition has on their ability to do their job.

If a GP considers their patient fit for work as normal they would not issue a fit note.

If a GP says that the employee "may be fit for work," employers are expected to discuss any changes that might help the employee return to work (for example, different hours or tasks) and if there is no agreement on these changes they should be treated as "not fit for work."

Sickness absence cannot be terminated where there has been a failure to make recommended

adjustments.

It has been known for an employer to ask for medical evidence before the worker has been off eight days. However, this is not normal practice and the GP is entitled to charge the patient for supplying it. Therefore, make clear to members that, if this happens, they should contact their safety rep or local UNISON steward to seek full reimbursement from the employer for the cost of the fit note plus associated travel.

## 6.2 Negotiating over handling periods of absence and return to work

During sickness absence, it is commonplace for an employee to provide an update to their manager on their health and expectations of return at agreed regular intervals.

While line managers deal with an estimated two-thirds of short term absence, management frequently shifts from line managers to HR for long-term absence, though this can hamper the sensitivity with which absence is treated as a good line manager is liable to have a better understanding of an individual's circumstances.

In handling the period of absence, management training should be clearly based around a philosophy of support and assisting rehabilitation.

As time goes on, it becomes more likely that in these regular updates the manager should begin to explore with the worker whether any medical diagnosis will be able to identify what help can assist a return to health and what workplace adjustments would help the worker maintain health on their return.

In this regard, a listing of general initial adjustments for consideration and an outline of possible medical assistance are set out below in sections 6.3 and 6.4 below

Policies for handling the period of absence should include the following features:

- Staff should have a clear avenue for contacting a senior figure other than their direct line manager to raise any issues about their health or return that they are

uncomfortable about discussing with their line manager (this option should allow for someone of the same gender as the member of staff to be specified);

- Once past an appropriate time period, the manager should make arrangements to redistribute the sick employee's workload among relevant staff.
- The information shared with other staff should be limited to that which the sick member of staff wishes to disclose.
- Over the first 28 days (the period normally defined as short term absence), it would be normal for contact to be made on at least a weekly basis. Beyond this period, appropriate regularity should be agreed.
- For longer term absence, it may be appropriate to hold a face-to-face meeting if the employee consents, with consideration given to meeting at the workplace, employee's home or a neutral location.

On return to work, it is commonplace for managers to hold a return-to-work meeting with the employee. The level of formality in such a meeting is liable to be tied to the length or regularity of absence. A brief discussion should suffice after just a single isolated day, while a more in-depth approach is appropriate after an extended period.

However, the purpose of these meetings should always be clearly defined as:

- Welcoming the employee back;
- Checking that they are well enough to work;
- Updating employees on any news while they were off;
- Identifying the cause of absence;
- Checking if there is anything the employer is required or can do to support the worker in maintaining their health.

Such meetings should not be confused with formal capability or disciplinary meetings or hearings, where different procedures should apply.

### 6.3 Negotiating medical support to be offered staff

To turn “supporting staff” into a reality, a manager must have a set of options for directing staff toward medical assistance. The possible sources of that assistance are outlined below.

#### National Health Service

Encouraging staff to seek advice from a GP is always liable to form the first line of assistance. As noted earlier, the GP can provide a Statement of Fitness for Work (or ‘fit note’) which outlines if they are unable to return to work or the conditions on which they could return.

The NHS provides extensive occupational health services which are set out on this [link](#), along with a listing of the local NHS providers that can deliver them.

In addition to the proactive assistance NHS occupational health services can provide in shaping a safe and healthy workplace, maximum access should be sought for staff in obtaining advice and assistance, including rehabilitation services.

#### Employee assistance programmes

The main way in which NHS services can be supplemented is through some form of Employee Assistance Programme (EAP) that can be made available to staff when they are ill, frequently as part of wider occupational health programmes providing regular health checks.

EAPs are normally available 24 hours a day, seven days a week, by telephone, although increasingly services can also be accessed through the internet. Such programmes generally include free counselling services for employees along with referral through to specialists.

As some local NHS trusts offer EAP services, employers should be encouraged to explore this option as a first preference for providing such services.

The Fit for Work Service which used to operate in England, Scotland and Wales provided an

assessment dimension before its abolition in 2018, but during its operation it adopted the following valuable principles, which would form a useful model for any EAP:

- Assessment was not compulsory;
- Employee consent had to be “explicit, informed, specific and freely given and had to be given at different parts of the process”;
- No report went to a GP or employer without discussion with the employee first, who could ask for changes or refuse to agree to it being shared;
- A return to work plan was developed following assessment.

Recent studies have suggested that EAPs save an employer £12 for every pound spent on the service<sup>7</sup>.

#### Advice lines

Employers can flag a host of free advice lines provided by mainly charitable organisations that can potentially assist staff in dealing with specific conditions.

UNISON’s [Proving Disability and Reasonable Adjustments guide](#) carries details of some of the organisations relevant to specific conditions.

And UNISON’s [Bargaining on Mental Health Policies guide](#) carries the major advice lines summarised below.

- *SANE – UK-wide mental health charity offering an advice line available 4.30-10.30pm every day of the year on 0300 304 7000. [www.sane.org.uk/](http://www.sane.org.uk/)*
- *Breathing Space – Scottish charity offering an advice line for anyone feeling low, anxious or depressed. Advice line available Monday-Thursday 6pm to 2am and Friday 6pm to Monday 6am on 0800 83 85 87 / Web: <http://breathingspace.scot/>*
- *Lifeline - The Northern Ireland crisis response helpline service for people who*

<sup>7</sup> Personnel Today, EAPs justify investment according to new benchmark, October 2018

- *are experiencing distress or despair. Advice line available 24 hours a day, seven days a week on: 0808 808 8000 [www.lifelinehelpline.info/](http://www.lifelinehelpline.info/)*
- *C.A.L.L. (Community Advice & Listening Line) – Welsh charity offering emotional support and information on mental health. Advice line available 24 hours a day, seven days a week on: 0800 132 737. [www.callhelpline.org.uk](http://www.callhelpline.org.uk)*
- *Samaritans – UK wide charity offering support for all forms of acute distress. The advice line is available 24 hours a day, 365 days a year on 116 123. [www.samaritans.org/](http://www.samaritans.org/)*
- *Mind - England and Wales based charity that directs callers to sources of local support through its helpline available Monday to Friday, 9am to 6pm, on: 0300 123 3393. [info@mind.org.uk](mailto:info@mind.org.uk)*
- *It also offers a Blue Light info line specifically for emergency service staff, volunteers and their families, during the same hours as the main line on 0300 303 5999. Web:[bluelightinfo@mind.org.uk](mailto:bluelightinfo@mind.org.uk)*

Though only available to UNISON members and therefore not a service that should in any way detract from employers fulfilling their responsibility to offer medical assistance, UNISON reps can direct members toward UNISON's There for You service.

Designed for members experiencing financial and emotional difficulties, the service provides a confidential advice and support service. There for You can be contacted by telephone on 020 7121 5620 and its services are explained at <https://www.unison.org.uk/get-help/services-support/there-for-you/>

### Health records

Dates or periods of absence are classified as “personal data” according to the Data Protection

Act 2018, whereas details of a worker’s illness or medical condition are classified as “sensitive data.” Since different rules apply to such data, the Information Commissioner code recommends that they are kept separately.

To have a lawful basis for processing personal data, at least one of the following must apply:

- Consent - The individual has given clear consent for processing of their personal data for a specific purpose.
- Contract - The processing is necessary for a contract with an individual.
- Legal obligation - The processing is necessary to comply with the law (not including contractual obligations).
- Vital interests - The processing is necessary to protect someone’s life.
- Public task - The processing is necessary to perform a task in the public interest or for the organisation’s official functions, and the task or function has a clear basis in law.
- Legitimate interests - The processing is necessary for the organisation’s legitimate interests or the legitimate interests of a third party, unless there is a good reason to protect the individual’s personal data which overrides those legitimate interests.

In order to lawfully process special category data, one of **10 further conditions** must also be met, the most common of which are:

- The person involved has given explicit consent for the data to be used in this specific way
- The data is needed to fulfil the employer’s obligations under employment law
- The data is needed in relation to legal claims.

The code clarifies further that “workers have legitimate expectations that they can keep their personal health information private and that employers will respect their privacy.”

Furthermore, legislation carries requirements that personal information held about patients

is effectively protected at all times against improper access or loss.

And patients have the right to see their personal information, which can be exercised through a subject access request.

## 6.4 Negotiating workplace adjustments

To turn “supporting staff” into a reality, a manager should have a clear set of adjustments that can be made to working arrangements, though these should be regarded as flagging possible options rather than an exhaustive list that does not allow deviation.

The broad categories of adjustment are

- Changing the way things are done;
- Overcoming physical features;
- Providing extra equipment.

Examples of reasonable adjustments quoted by the Equality Act include:

- Changing equipment;
- Providing aids – including extra support and equipment;
- Changing the location of work;
- Changing policies and procedures;
- Allowing extra time off work;
- Allowing flexible working;
- Changing the worker’s role or parts of the worker’s role;
- Offering counselling or mentoring.

However, as noted earlier, the union should make the case that adjustments should not just be available to individuals who fall within the Equality Act definition of a disabled person but should be available to any member of staff experiencing issues that contribute toward sickness absence. The adjustment required by an individual will of course depend on the nature and impact of the barriers they face, but additional adjustments that could be negotiated include:

Working hours or patterns

- Adjust start/finish times and/or shift patterns

- Allow paid leave for medical appointments
- Allow absence to be classified as disability leave
- Allow flexible breaks, such as shorter but more frequent breaks
- Allow annual leave to be spaced regularly throughout the year
- Allow working from home more regularly
- Allow part-time working on a temporary or long-term basis, possibly without loss of pay
- Allow additional time for workers to reach performance milestones
- Allow consideration of redeployment to a more suitable role, with the worker’s consent

Physical environment

- Minimise noise – for example, provide a private office, room dividers / partitions or a quiet space for breaks away from the main workspace
- Offer a reserved parking space
- Move the workstation – for example, to ensure that someone does not have their back to the door or next to printer
- Provide / allow for a light-box or seat with more natural light for someone with seasonal depression

Support with workload

Increase frequency of supervision

Provide support for prioritising workload

Allow the individual to focus on a specific piece of work

Consider job sharing

Reallocate tasks among workers

Other forms of support

- Provide a job coach
- Provide a buddy or mentor
- Provide mediation if there are difficulties between colleagues
- Offer additional training on skills needed for the job.

Advice on adjustments appropriate to working alone is available [here](#).

Advice on hybrid working is available [here](#).

It is imperative that union reps document any requests for, and decisions made about, making adjustments.

In particular, reps should make a note of:

- What work issues were of concern to the member;
- What advice the rep sought about adjustments;
- Evidence of how they supported their member to discuss with the employer what adjustments would be put into place;
- What adjustments were agreed and a process for reviewing arrangements.

Unions should also encourage employers to document decisions they take about making adjustments. Both parties may need to provide this documentation for a grievance procedure or an employment tribunal. The member should also have a record of any such requests and what the outcome was.

This process can be made easier for the employer and the member if an Accessibility Passport is used. UNISON's bargaining guide gives more information on this and includes a template passport available [here](#).

### 6.5 Negotiating over holiday entitlement during sick leave

Statutory holiday entitlement is built up while an employee is off work sick, no matter how long they are off.

Any statutory holiday entitlement that is not used because of illness can be carried over into the next leave year (18 months is a common time limit for taking leave built up).

The amount of time built up is limited to the four weeks minimum defined by the basic EU Working Time Directive that was amended by the UK government when established in UK law.

If an employee is ill during any holiday period, they can take it as sick leave instead, subject to the normal rules for notification and certification.

Conversely, an employee on sick leave can ask to take a period of that time as paid holiday – a scenario that's only likely to apply where the employee would rather be on full pay than a reduced rate under occupational or statutory sick pay arrangements.

However, employers cannot force employees to take annual leave when they're eligible for sick leave.

### 6.6 Negotiating over trigger points

Absence policies often include "trigger points" for some kind of employer intervention – most frequently, initiation or escalation of capability or disciplinary procedures.

These triggers are usually constructed from the following dimensions of a sickness record:

- Patterns of absence– such as when absence repeatedly occurs either side of a weekend or holiday period;
- Duration of absence;
- Frequency of absence.

Many methods use a combination of frequency and records. One of the most widely known and crude such methods is known as the Bradford Factor. Each employee's record is turned into a score by taking the number of occasions that they have been sick, multiplying that figure by itself, then multiplying by the total number of days absent.

For instance, if someone has five separate periods of absence and three of those periods were for one day and two for two days, the Bradford Factor would be  $5 \times 5 \times 7$ , ie 175. If someone has just one episode of absence and that episode lasts seven days, the Bradford Factor would be  $1 \times 1 \times 7$  ie 7. Therefore, the two workers have been absent from work for the same period of time, but one has a much higher Bradford Factor because of the way in which they have taken those days.

This method penalises the frequency of days sick more than the actual number of days taken and may carry an implicit belief that frequent



odd days are reflective of “throwing a sickie” and lack of a genuine reason to be absent. Although patterns of absence may indicate underlying causes of ill health, an over-emphasis on such patterns can reflect a similarly distrustful mindset.

A trigger system that emphasises short-term frequent sickness can also have a particularly disadvantageous effect on disabled staff, if frequent absences are linked to the nature of their impairment, and women, where absences are linked to a menstrual disorder or menopausal symptoms.

A trigger system based on the objective facts can be viewed as a fair way of addressing sickness absence which limits biased managerial decisions about when to intervene. However, union reps should seek to ensure that meetings established in response to passing a trigger point at least in the first instance should be clearly conducted for the purpose of exploring causes with a view to providing support that helps employees maintain their health more consistently. It should also be remembered that changes to trigger levels for disabled staff can constitute a reasonable adjustment.

UNISON data suggests that the average triggers used across local authorities are around 10 days absence over a nine-month period or four absence occasions over an eight-month period. Some of the most favourable policies specify 20 days over a 12-month period or eight occasions over a 12-month period.

Moving toward a disciplinary process should only take place where management has clear grounds to believe that absence has not been due to genuine sickness (UNISON’s model disciplinary procedure is set out on our [bargaining guides page](#))

Moving toward a capability process should only take place where the level of absence goes beyond what an organisation can reasonably be expected to sustain (UNISON’s model capability procedure is set out on our [bargaining guides page](#)). However, this procedure should retain

the features of the sickness absence policy - providing support and exploring all options to help staff achieve reasonable attendance.

Before an employer can dismiss an employee who is long-term sick, employers must:

- consider if an employee can return to work - such as by working flexibly or part-time, doing different or less stressful work (with training if necessary)
- consult with employees about when they could return to work and if their health will improve.

An employer should also be pressed to set out a commitment to consider redeployment and to offer the option of ill health retirement if that is the preference of the employee.

## 6.7 Negotiating over treatment of terminally ill workers

Specific arrangements for a worker diagnosed with a terminal illness should form a target for any sickness absence agreement (as set out in the UNISON guide [A Positive Work-Life for the Terminally Ill](#)).

The TUC’s Dying to Work Charter ([www.dyingtowork.co.uk](http://www.dyingtowork.co.uk)) frames the key protections in terms of establishing:

- A clause that no worker with a terminal illness will be dismissed because of their condition;
- That any Employee Assistance Programme has the capacity and competency to provide support to any person with a terminal illness, including access to counselling and financial advice;
- That management training will cover how to discuss future plans with any worker who has a diagnosis of a terminal illness and agree adaptations that would ease their remaining time at work.

Any discussion with the worker of their preferred alternatives should seek to establish whether the most financially advantageous arrangement would be termination of employment with a lump

sum payment or ill health retirement if they are unable or do not wish to remain in work.

The charter is built around the principles that the employer will provide security of work, peace of mind and the right to choose the best course of action for the worker.

In seeking to persuade the employer to sign up the charter, it may be useful to demonstrate

that a number of public service authorities have signed up to the charter. The full list can be found at [www.dyingtowork.co.uk/whos-signed/](http://www.dyingtowork.co.uk/whos-signed/) and includes the Black Country Partnership NHS Foundation Trust, the Mid and West Wales Fire and Rescue Service, Stockton-on-Tees Borough Council, Leicestershire Police Service, South Lanarkshire Council, University of Kent, and Severn Trent Water.

### **Action checklist 5**

- *Press for inclusion within management training of guidance on sensitive and confidential handling of conversations from sickness notification through to return to work.*
- *Ensure terms for notification are reasonable and penalties for failing to meet requirements are not excessive.*
- *Ensure that all contact during absence and on return to work is built around a philosophy of providing rehabilitation and support.*
- *Turn supportive intentions into reality with a full range of services that can assist in diagnosis and recovery, including consideration of an employee assistance programme.*
- *Turn supportive intentions into reality with a full range of workplace adjustments available for managers to recommend in assisting any member of staff.*
- *Press the employer to agree an Accessibility Passport based on UNISON's guide available here*
- *Push to remove any Working Time Directive 20 day limit on leave that can be accrued during sick leave and include the full annual leave entitlement.*
- *Ensure staff are aware of their right to take sick leave when ill during a holiday and that they report to the branch any pressure put on them to take sick leave as holiday.*
- *If a trigger system is to be utilised, ensure that it is based on a reasonable combination of duration and frequency that does not unduly exaggerate either dimension, alongside equality proofing of the system.*
- *Ensure trigger meetings start from the default position that their purpose is to explore causes and the support that can be provided to an employee.*
- *Ensure that there are compelling grounds for any move toward disciplinary or capability procedures.*
- *Argue the case for the employer to sign the TUC Dying to Work Charter utilising the TUC's campaigning materials.*
- *Enshrine the features of that charter into a sickness absence agreement to provide extra protection to workers who are diagnosed with a terminal illness.*

## Appendix 1 – Model survey

In order to assist UNISON **[branch name]**'s work in defending and seeking improvements in the **[employer's name]** sickness absence scheme, we would greatly appreciate it if you could spare the time to complete this survey.

The survey covers just 24 questions and would normally take less than 15 minutes to complete. All responses to this questionnaire are anonymous and will be treated as confidential. It will not be possible to identify any individual from information used for the claim.

<b>1. If you have had any days absent due to sickness over the last year, what have been the reasons?</b>	
Minor illness (such as cold, flu, stomach upset, headaches and migraines)	
Stress	
Musculoskeletal injuries (such as neck strain, repetitive strain injury, back pain)	
Mental ill health	
Severe physical condition (not including musculoskeletal injuries)	
Disability recognised under equality legislation (as per UNISON guidance)	
Women's reproductive health issues (such as menstrual disorder, menopausal symptoms, endometriosis)	
Covid-19	
Long Covid	
Other (please state below)	

<b>2. If you have been absent over the last year for any reason connected to mental ill health or stress, has this been connected to any of the following issues?</b>	
Workload	
Bullying and harassment from management;	
Bullying or harassment from other staff	
Bullying or harassment from service users	
Non-work factors (eg relationships, family, post-natal depression or linked to another health condition)	
Other (please state below)	

<b>3. Over the last year, have you attended work despite feeling too unwell to work?</b>	
Frequently	
Sometimes	
Never	

<b>4. Over the last year, have you have taken days as leave when you were too unwell to work?</b>	
Frequently	
Sometimes	
Never	

<b>5. Over the last year, have you been classified as taking sick leave when you were off work for any of the following reasons?</b>	
Ill or forced to take time out due to reason related to a disability	
Attendance at a medical appointment	
Taking time off to care for a close family member	
Ill due to injury sustained at work	
Illness during pregnancy	
Taking time out due to bereavement	
Other (please state below)	

<b>6. Over the last year, have you raised any concerns with management about issues in the workplace that have (or potentially could have) impacted on the health of yourself or your colleagues?</b>	
Yes	
No	

<b>7. If so, was the issue dealt with satisfactorily by management?</b>	
Yes	
No	
Don't know	

<b>8. If so, please state in a couple of sentences the nature of the issue raised</b>	

<b>9. Do you feel comfortable talking to your line manager about health-related issues?</b>	
Yes	
No	
Don't know	

**10. If not, do you feel able to raise such issues with another management figure who can take appropriate action?**

Yes

No

Don't know

**11. If you have been absent due to sickness over the last year, do you feel that your manager has been supportive of you during your absence?**

Yes

No

Neither supportive nor unsupportive

**12. If you have been absent due to sickness over the last year, did you ever feel pressurised into returning to work before you were ready?**

Yes

No

**13. If you have been absent due to sickness over the last year, were you offered any medical assistance in diagnosis and / or recovery beyond that available through the NHS?**

Yes

No

**14. If you have been absent due to sickness over the last year, were you content with what information was disclosed by your manager to your colleagues?**

Yes

No

Don't know

**15. If you have been absent due to sickness over the last year, were you content with how your workload was handled during your time off?**

Yes

No

Don't know

**16. If you have returned to work following a period of sickness over the last year, which of the following took place?**

A formal return to work meeting

An informal discussion on return to work

No return to work meeting or discussion

<b>17. If you did have a return to work meeting or discussion, how would you describe the spirit in which it was conducted?</b>	
Supportive, with consideration given to assistance the organisation can provide to help maintain your health	
Supportive, without consideration given to assistance the organisation can provide to help maintain your health	
Neither supportive nor unsupportive	
Unsupportive	
Hostile	
If you have any further comments to explain your response, please state below	

<b>18. If you had a meeting following passing a “trigger point” in the organisation’s sickness policy, how would you describe the spirit in which it was conducted?</b>	
Supportive, with consideration given to assistance the organisation can provide to help maintain your health	
Supportive, without consideration given to assistance the organisation can provide to help maintain your health	
Neither supportive nor unsupportive	
Unsupportive	
Hostile	
If you have any further comments to explain please state below	

<b>19. What type of contract are you on?</b>	
Permanent	
Temporary	
Full time	
Part time	
Agency	
Zero hours	
Self employed	
Other (please state below)	

<b>20. Do you describe yourself as a disabled person?</b>	
Yes	
No	
Prefer not to say	

<b>21. Would you describe yourself as? (tick all that are appropriate)</b>	
Bisexual	
Gay	
Heterosexual / straight	
Lesbian	
Other sexual orientation	
Prefer not to say	

<b>22. Would you describe yourself as transgender or having a trans history?</b>	
Yes	
No	
Prefer not to say	

<b>23. How do you describe your gender?</b>	
Male	
Female	
In another way	
Prefer not to say	

<b>24. What is your age group?</b>	
16-19	
20-29	
30-39	
40-49	
50-59	
60 or above	

<b>25. How do you describe your ethnic origin?</b>					
	Asian UK		Black African		Chinese
	Asian Other		Black Caribbean		Irish
	Bangladeshi		Black UK		White UK
	Indian		Black Other		White UK
	Pakistani		Black mixed heritage		Other mixed heritage

## Advice on conducting a survey

The survey template above is designed to identify the key sickness absence related concerns of members and generate data, quotes or examples that are likely to influence the employer in the shaping of their sickness absence scheme. However, surveys can entail some notable pitfalls that can be addressed by observing the following points:

- Start planning the survey in good time to develop the questions, allow a two or three week period for responses and sufficient time for result analysis before any deadline in meeting employers or lodging a proposal.
- Try to keep the survey short so that it is not overly demanding on staff time and they are more likely to complete it. As a rough guide, it should take between five and 10 minutes to complete, which means between 10 and 30 questions.
- Requiring answers that are specific reduces the time necessary for analysis. For example, if asking “How would you describe morale?”, requiring responses of High, Moderate or Low will enable you to quickly establish from the results that, for instance, 64% of staff see morale as low. If the answer is left open, responses will have to be analysed one by one to place them in categories and provide usable percentages for a claim.
- However, there can be a place for open-ended questions as they can generate quotes and examples of value to a claim. For instance, supplementing a survey with a question such as “In what way has your experience of work changed over the last year?” may give you a telling quote that makes a point more effectively than a page of percentages.
- Profile questions are normally asked at the end of surveys to enable the results to be broken down according to certain categories. For example, a gender question will enable you to see how the concerns of women differ from that of men. Therefore, think about how you will want to break down results and establish the profile questions accordingly.
- Ensure that the survey carries a preamble that emphasises to members that the survey is completely anonymous, makes plain the purpose for which the gathered data will be used and tells them approximately how long the survey will take to complete.
- Always make sure that the data you submit to the employer protects your members’ identities.
- The best method for protecting confidentiality and for reducing the time necessary to analyse results is to conduct an online survey. The recommended online survey service is set out below. However, if the survey is sent out to email addresses, care has to be taken that this is compliant with the General Data Protection Regulations. Distribution should take place through UNISON’s WARMS system (Web Access RMS), to ensure that the emails used for members are those that they have provided for such purposes to the union.
- Consider alternative ways to gain the benefits of an online survey without the restrictions of email distribution. For instance, you could place the survey link on social media if you are confident that it would be accessed by sufficient staff without notifying emails. Alternatively, you could seek to develop a joint pay survey with the employer (if that did not mean too many compromises on questions asked), which the employer could then distribute to staff.
- If you decide on manually distributing a hard copy survey, ensure that the survey can be returned as confidentially as possible. Like the examples above which do not rely on union email distribution lists, the advantage to this method is that it can go wider than



UNISON membership if agreed with any other unions representing staff. In this way, it may both gather a wider section of staff views that carries more weight with the employer and assist in recruiting members by highlighting the role of the union in advancing staff terms and conditions.

### **Online survey providers**

*SurveyMonkey is one of the most widely used online survey services but UNISON now recommends Alchemer because you can request for the data to be hosted within the EU, making it compliant with the new UK-GDPR (General Data Protection Regulation) and amended Data Protection Act (2018) that took effect on 31 January 2020 following Brexit. SurveyMonkey does not have this functionality. Alchemer is also more transparent about how it stores personal data.*

*There is a free version of Alchemer which will handle up to 100 responses. However, The basic paid package allows for unlimited surveys and responses, while allowing for anonymity in those responses. It is possible to sign up for Alchemer here: <https://www.alchemer.eu> [Please make sure that you use the .eu address and not the .com address so that it is EU based]*

*Alchemer pricing starts at £34.56 per month.*

*The Alchemer support website carries these useful links:*

- *Tutorials:* <https://www.surveygizmo.com/tutorials/>
- *Building accessible surveys:* <https://help.surveygizmo.com/help/how-to-build-accessiblesurveys>
- *Alchemer Support team:* <https://help.surveygizmo.com/help/surveygizmo-support-hours>

*Alchemer's instructions on how to make voting anonymous are here:*  
<https://help.surveygizmo.com/help/anonymous-surveys>

*For every Alchemer account that contains UNISON member data, a branch elected official should notify their Regional Head.*

*In distributing any survey, a data protection statement should be included as follows "All responses to this survey are completely anonymous. The data collected in this survey will only be used by UNISON for the purposes of understanding members' views. The survey is run using Alchemer, run on servers at their data centre in the European Economic Area. The data will not be sent out side of the EEA. This data will not be shared with other 3rd parties, and it will only be stored for as long as UNISON needs it. It will not be used for any other purposes. You can read UNISON's Privacy Policy at <https://www.unison.org.uk/privacy-policy>"*

*If you have any data protection queries in relation to online surveys you are using please contact UNISON's Data Protection Officer at [dataprotection@unison.co.uk](mailto:dataprotection@unison.co.uk)*

## Appendix 2 - Model sickness absence agreement

- 1 General principles of agreement
- 2 Reporting procedure
- 3 Classification of sickness absence
- 4 Handling of long term sickness
- 5 Return to work
- 6 Maintenance and use of records
- 7 Disciplinary and termination action
- 8 Pay during sickness absence
- 9 Consultation and monitoring

# Sickness absence agreement between [name of employer] and [UNISON branch]

## 1 General principles of agreement

- 1.1 Both [Name of employer] and [UNISON Branch] recognise the crucial role of sickness absence procedures as part of a wider organisational policy to establish a healthy workplace.
- 1.2 This agreement aims to take a supportive approach to sickness absence by tackling the underlying causes of sickness and offering assistance to employees during and after a period of sick leave.
- 1.3 The parties recognise that such an approach has a positive effect on the standard of service provided by the organisation through the benefits to workforce morale and retention of staff.
- 1.4 The agreement seeks to balance the need to maintain high standards of service with a consistent, sensitive approach to absence management that is based on a starting assumption of trust between managers and staff.
- 1.5 The parties recognise the critical role of training in carrying this agreement through into practice, particularly with regard to line managers.
- 1.6 [Name of employer] accepts that workers may wish to be accompanied by a trade union rep to any meeting concerning sickness absence that is held as part of the procedures defined in this agreement.
- 1.7 The agreement applies to all staff who are employed at [Name of employer] regardless of their type of contract.
- 1.8 The parties recognise that where an employee is disabled there may be a need for adjustments to the procedures outlined in this agreement.

## 2 Reporting procedure

- 2.1 On the first day of sickness absence employees should contact their manager as soon as possible, and ideally prior to their start time, to advise them that they will not be attending work, along with the reasons and likely duration. The regularity of updates thereafter will be subject to agreement between manager and employee.
- 2.2 Completion of the [Name of employer] self certification document will be required after [insert the number of days after which sick pay becomes payable] days.
- 2.3 When a worker has been off for more than seven consecutive days (including non-working days) the worker will provide a doctor's "fit note".
- 2.4 If the fit note states that the worker may be fit for work, the manager will enter into discussions with the employee concerning any doctor's recommendations for a phased return to work, altered hours, amended duties or workplace adaptations. Return will depend on prior agreement and implementation of any such recommendation. If it is not possible for the manager to provide the required support, the statement will be regarded as if the doctor had advised "not fit for work."

### 3 Classification of sickness absence

3.1 Managers will establish as early as possible whether unfitness to attend work falls within the following categories, which are not counted as sickness:

- Disability related absence, including mental health problems;
- Work related injury or illness;
- Pregnancy related absence;
- Gender reassignment under medical supervision;
- Menopause related absence;

Procedures for absence on the basis of these issues are dealt with under the separate organisational policies on disability leave, health and safety, maternity leave and menopause related absence.

3.2 Care shall also be taken that other forms of absence are not recorded as sickness, such as:

- Caring for sick family and relatives;
- Family and emotional problems;
- Any pre-agreed periods of absence to receive medical treatment.

Procedures for absence on the basis of these issues are dealt with under the separate organisational policies on special leave.

3.3 If a worker becomes sick while on annual leave, as long as established reporting procedures have been observed, the annual leave will be reinstated. [This is a legal requirement for annual leave that forms part of the 20 day entitlement under the Working Time Directive, however, try to negotiate for it to apply to all leave]

3.4 Where a worker is on long term sick leave, they will continue to accrue annual leave and will be entitled to take holiday as long as it is reported as annual leave and the holiday is not of a sort that could be considered to hinder recovery.

3.5 Given the compressed timeframe for taking annual leave that can result from an

extended period of sickness absence, a flexible approach will be taken to allowing the carry-over of more than the usual permitted level of annual leave to the following leave year.

### 4 Handling of long term sickness

4.1 Long term sickness refers to any period of absence that has lasted or is anticipated to last 28 days or more.

4.2 The manager and worker will agree the regularity of contact and preferred form of contact during absence. Home visits will only take place with the express consent of the employee.

4.3 Discussions between managers and employees will focus on:

- Any further health assessment other than that undergone for the doctor's fit note, which may be of assistance in recovery and return to work.
- Phased return to work, altered hours, amended duties or workplace adaptations or redeployment which may assist the worker to return to work without bringing about a recurrence of the sickness experienced by the employee.

4.4 Where an employee is uncomfortable discussing their health issues with their line manager for any reason, an HR contact will be provided to enable the discussion to take place with an appropriate alternative figure.

4.5 During absence, an assessment will be made of cover arrangements to ensure that they do not place an undue burden on staff and consideration will be given to the temporary employment of additional staff.

4.6 At no point will employees be placed under pressure to return before they are sufficiently well and additional medical assessments will only be requested when they are reasonably likely to provide new information.

## 5. Return to work

- 5.1 An informal return to work discussion will take place following any period of absence. A more formal return to work meeting will take place following absence in excess of 14 days or persistent short term absence (defined as three absences in a three month period or seven in a 12-month period).
- 5.2 The depth with which issues are covered will vary according to whether an informal discussion or formal meeting applies, but the purpose of any return to work engagement by managers will be to:
- Welcome the worker back;
  - Check that they are well enough to work;
  - Update workers on any important news while they were off;
  - Identify any further information not already known that might impact on the employee's future attendance, including whether the employee may be disabled;
  - Discuss whether any further health assessments can assist the worker in maintaining their health;
  - Discuss options, on a temporary or permanent basis, for phased return, altered hours, amended duties, workplace adaptations or redeployment which may assist the worker to maintain their health.
  - Offer staff an alternative HR contact if for any reason they are uncomfortable discussing their health issues with their line manager.
- 5.3 Consideration will be given to holding a return to work meeting before the actual return to the workplace in the case of long term absence. This meeting may take place by phone, at a neutral venue or at the worker's home, subject to the agreement of both parties.
- 5.4 If the meeting is held at the workplace, it will take place in a private room appropriate for discussion of confidential issues.
- 5.5 If a manager believes that an employee has come to work when they are not sufficiently well, or there is a risk of infection spreading, a discussion will be held with the employee with a view to agreeing whether there are grounds for absence or an adjustment such as working from home.
- 5.6 Managers will take into account that an employee may feel very anxious about returning to work after a lengthy period of absence and worried about how they will be perceived and treated by colleagues and management. This may be a particular concern if the employee's absence was the result of a mental illness. In such cases, managers will take positive steps to make the employee feel at home and facilitate their reintegration into the workplace.
- 5.7 Where redeployment is agreed as an appropriate response to a worker's health condition or disability, managers will take the following steps:
- Arrange for HR to review and identify suitable possible vacancies as they arise;
  - Consider retraining and/or skills assessment where appropriate;
  - Where a worker is assessed as meeting the essential criteria of the person specification for a vacancy at the same or lower grade, they will be slotted in to that vacancy following a satisfactory trial period;
  - The trial period may be extended in exceptional cases, subject to agreement with the new manager for a further period of up to three months.

## 6 Maintenance and use of records

- 6.1 Communication between managers and employees regarding the cause of sickness absence will be treated as confidential. Although other staff will need to know that their colleague is off work due to sickness, they are not required to know the cause of the absence. The manager should ensure that only those persons who need to know should be given access to relevant information and they in turn should treat that information as confidential.
- 6.2 Information will not be disclosed by the manager to a third party without the consent of the worker concerned, except where failure to do so would be contrary to the public interest, or a breach of health and safety or other legal obligations.
- 6.3 The worker's written consent will be obtained for a manager to see any medical report. A worker's right to see a copy of any report before it goes to a manager and comment on the content will be respected, as will a worker's right to request an alternative view from their GP or a specialist.
- 6.4 All records will be retained and processed in accordance with the General Data Protection Regulations classification of health records as special category personal data. Any failure to comply with the regulations in handling of staff medical records will be treated as a serious disciplinary matter.
- 6.5 Statutory Sick Pay records will be kept in accordance with Regulation 97 of the Income Tax (Pay As You Earn) Regulations 2003.
- 6.6 Sickness absence records will be used to comply with the duty to risk assess any hazards in the workplace, in accordance with the Management of Health and Safety at Work Regulations (1999), as well as more broadly to inform policy through general trends without identifying specific individuals.

- 6.7 Managers will ensure that sickness absence records are not utilised to influence discretionary payments, such as any form of performance pay.
- 6.8 Where an employee has chosen to discuss their sickness absence with an HR contact rather than their line manager, HR shall observe the same data protection duties specified above for managers.

## 7 Disciplinary and termination action

- 7.1 Properly reported sickness absence where the employee is ill will never, on any grounds, be subject to disciplinary procedures. Disciplinary procedures will only be applied where absence is unauthorised, or where there are reasonable grounds for believing that a worker's prior claim (s) of absence are not accurate. In such cases, [Name of employer]'s standard disciplinary procedure will be followed.
- 7.2 Where an employee's level of sickness absence is believed to be of sufficient level so as to impact on their capability to do the job, the full capability procedure will be followed. Every effort will be made to assist a worker to achieve the health necessary for a reasonable level of attendance, including exploring all options for redeployment and other workplace adjustments. Only in the event of all such avenues being exhausted would termination of employment be considered. In such an event, the terms of ill health retirement will be made available.

[Any trigger level in terms of number and regularity of absence for entering into the capability procedure should be set at a level that could reasonably be considered to impair the proper discharge of a job role and be subject to an equality impact assessment to ensure that "due regard" is given to the need to avoid discrimination, as set out in the Equality Act 2010 [for Northern Ireland, the relevant legislation is Section 75 of the Northern Ireland Act 1998]

- 7.3 The capability procedure will be subject to adaptation for any disabled worker. [Any specified trigger levels will be considered for adjustment in such cases]
- 7.4 An employee will have the right to appeal when notified of a decision to terminate by placing a written statement of appeal with [specify senior manager or member of HR].
- 7.5 Where a worker has a terminal illness, employment will not be terminated under any circumstances unless it is agreed that the most financially advantageous arrangement for the worker would be termination of employment with a lump sum payment rather than ill health retirement.

## **8 Pay during sickness absence**

- 8.1 Workers shall be entitled to payment under the [Name of employer] sick pay scheme from the first day of sickness.
- 8.2 Workers shall be entitled to 21 weeks occupational sick pay after one year, 32 weeks after two years and 52 weeks after five years.
- 8.3 This entitlement shall be composed of full pay for half the entitlement period and half pay for the remainder [these represent average terms in the public sector – if you want to propose terms more in line with your specific sector, contact Bargaining Support at [bsg@unison.co.uk](mailto:bsg@unison.co.uk) for details]

## **9 Consultation and monitoring**

- 9.1 [Name of employer] will consult with health and safety reps in good time through the joint health and safety committee over any proposal that can be expected to have a significant effect on sickness absence in accordance with (Safety Representatives and Safety Committee Regulations 1977).
- 9.2 A regular review of the sickness absence policy that draws on aggregate sickness absence data will be held through the joint health and safety committee with a view to agreeing improvements.

### **Note on disability references**

The various references in this model document to disabled workers may not be necessary if the employer accepts that all disability related absence should be covered by the organisation's disability leave policy and the contents of that policy are sufficiently strong. However, the sickness and disability leave agreements should be read in conjunction to check that they provide the protections specified in this document.

