

Labour Relations Agency

Improving employment relations

Advice on managing absence from work

September 2007

Labour Relations Agency

Head Office, 2-8 Gordon Street, Belfast BT1 2LG

Phone: 028 9032 1442

Regional Office, 1-3 Guildhall Street, Londonderry BT48 6BB

Phone: 028 7126 9639

Website: www.lra.org.uk

E-mail: info@lra.org.uk



We have written this guide to help anyone dealing with or affected by absence. It gives unbiased advice to employers, employees and their representatives.

We have provided legal information for guidance only, so you should not consider it to be a complete statement of the law. It may be wise to get legal advice.

Contents

	Page
1 Introduction	4
2 Types of absence	4
3 Causes of absence	5
3.1 Outside causes	
3.2 Internal causes	
4 Costs of absence	7
5 Measuring and monitoring absence	7
5.1 Absence records	
5.2 Measuring absence	
6 Dealing with absence as a conduct problem	10
6.1 Persistent, short-term absence due to illness where there is no specific medical cause	
6.2 Unauthorised absence	
7 Dealing with absence as a capability problem	13
7.1 Genuine long-term sickness	
7.2 Continual short-term absence due to a medical condition	
8 Statutory dismissal procedure	19
9 Other absence issues	21
9.1 Data protection	
9.2 Disability discrimination	
9.3 Absence and pregnancy	
10 More help	23
Appendix 1 - What to include in an absence management policy	24
Appendix 2 - Access to medical reports for employment purposes	26

1 Introduction

Absence from work is a problem for many organisations and can affect productivity, morale and flexibility. It can also be a burden on management time and a significant cost to the organisation through down time (that is time when machinery is not being used), sickness payments, paying temporary replacement staff and overtime payments to cover absent employees.

To reduce the effect of absence, an organisation should develop a policy and procedure for managing absence. This will:

- make sure that employees are aware of what the organisation considers to be acceptable and unacceptable levels of absence;
- define authorised, unauthorised and sickness absences; and
- make sure that line managers are trained in dealing with certain types of absence and have guidelines for dealing with those absences fairly and consistently.

This guide will:

- focus on unauthorised absence and certified and uncertified sickness absence;
- look at the different types of absence;
- examine methods of measuring absence;
- suggest techniques for handling absence; and
- outline what should be included in an absence management policy - see Appendix 1.

2 Types of absence

In managing absence, it is helpful to differentiate between the various types of absence and highlight those absences that the organisation may take action over. Examples include the following.

- Unauthorised absence – where the absence isn't reported
- Certificated sick leave
 - Self-certified where the employee fills in an HM Revenue & Customs SC2 form
 - Certified (where a doctor's certificate is given)
- Uncertified sick leave
- Authorised absence

- Holidays
- Education and training courses
- Absence on public duties (for example, jury service)
- Absence on trade union duties
- Time off for antenatal care
- Maternity leave
- Adoption leave
- Suspension for medical or maternity reasons
- Paternity leave
- Parental leave
- Time off for dependants
- Other forms of special leave given under the contract of employment

In general, authorised absences can be organised beforehand in response to the needs of the organisation and the worker.

3 Causes of absence

Organisations should measure and analyse their absence figures to find out if they have a problem and which of the main broad categories of absence are involved, that is, long-term sickness, short-term certified or uncertified absences, or unauthorised absence.

When developing approaches to deal with any absence problems, organisations should ideally try to identify the real reasons why people are absent from work.

If specific causes can be identified, the organisation can then decide what can be done to either remove or reduce these. However, a lot depends on whether these causes are within any organisation's control. Whether or not the real causes are apparent, organisations should develop and put into practice clear policies and practices to reduce absence.

Causes of absence may be **outside the organisation** (not directly within its control or influence) or **within the organisation** (possibly within its direct control or influence).

3.1 Outside causes might include:

- genuine health problems for which the organisation is not at fault;
- the employee's domestic-care responsibilities; and
- the employee's travel difficulties.

While the employer might not be in a position to directly remove these causes, various measures may still be possible to reduce the problems. These might include the following.

- Measures to encourage people to return to work sooner, for example, by arranging a gradual return, lighter duties or shorter working hours for an appropriate period, where absence is due to genuine long-term ill health.
- Various measures to take account of domestic care responsibilities, such as more flexible working hours, job-sharing, working from home or part-time working.

3.2 Internal causes might include:

- genuine health problems for which the organisation is at fault;
- poor relationships between employees and management;
- poor relationships between employees (for example, bullying and harassment);
- unresolved complaints;
- poor working conditions;
- unreasonable job pressures;
- high expectation of overtime; and
- poor job satisfaction.

When managers are trying to identify possible causes of absence within the organisation, they should critically ask themselves what it is about their organisation that would make employees want to stay away from work when they are fit enough to be there.

- Are jobs designed to provide variety, responsibility, contact with other people, feedback, some challenge and clear goals?
- Are our managers 'good' at managing people?
- Are we aware of long-term and serious relationship problems which we have been ignoring in the hope that they will eventually go away?

If it is clear that people are absent because of genuine health problems caused by the workplace, organisations should review their health and safety standards and how they are being applied and maintained.

4 Costs of absence

The cost of absence will vary from organisation to organisation, but in most the cost of absence can be measured by:

- the high cost of sickness payments;
- unnecessarily high staffing levels and overtime payments;
- management time spent dealing with absence problems;
- the cost of cover and replacement staff, including training;
- loss of business as a result of customers not being satisfied with delayed production and missed delivery deadlines or a lower quality of service;
- lower productivity due to low workforce morale caused by increased stresses on the workforce or disruptions to the flow of work; and
- the cost of tribunal claims (medical reports, solicitor's fees, compensation if the employee is considered to have been unfairly dismissed).

A high level of absence is not just a management problem. Employers, employees and their representatives have an interest in making sure that absences do not affect their job satisfaction or security. By working together to develop ways of monitoring and controlling absence, managers, employees and their representatives are not only controlling costs and increasing productivity but also making sure the whole workforce is treated fairly.

5 Measuring and monitoring absence

5.1 Absence records

Before deciding how to deal with absence, organisations should first make sure they measure and monitor absences. To help do this, organisations need detailed and accurate attendance records.

In analysing absences, organisations should ask the following questions.

- Is there really a problem?
- What happens throughout the industry?
- Are certain groups, departments or shifts particularly affected?
- How many employees are involved? If there is a large number, this would suggest there is a general problem.

- What type of absence is involved, for example, unauthorised absence, certificated absences or many cases of one-day absences?

Absence records are extremely important. For each individual employee, these should show:

- each absence;
- how long each absence lasted;
- a reason for each absence; and
- the dates of each absence.

It may be useful to code the reasons for absences to get a clearer picture when trying to find a solution. Reason codes should show whether the absence is:

- a self-certified sickness;
- a certified sickness (medical certificates);
- an uncertified sickness;
- unauthorised (no reason given); or
- authorised, with sub codes for specific types such as training, public duties, domestic reasons, holidays, maternity leave, paternity leave and so on.

If records are to be used for monitoring purposes, it is crucial that they are maintained **consistently and accurately**. This is extremely important for those supervisors and managers carrying out 'return-to-work interviews' (see 6.1 a). People who are responsible for providing and maintaining this information should be trained in how to use it. The records should also be in a form which can easily be analysed, not only by individual employees but also by sections and departments.

This information is covered by data protection law and so should be stored securely and safely, and used only for the purposes of managing absence.

The Information Commissioner has published an 'Employment Practices Code' which gives more advice and information on data protection law. You can download this code from the Information Commissioner's website at www.ico.gov.uk, or you can contact the Information Commissioner's Office - Northern Ireland, Room 101, Regus House, 33 Clarendon Dock, Laganside, Belfast BT1 3BG (phone 028 9051 1270).

5.2 Measuring absence

There are a number of measures that can be used to assess absence, each of which gives information about different aspects of absence.

a 'Lost time' rate

This shows the percentage of total time available which has been lost due to absence. When using the lost-time rate, it is important to be aware of what is being counted as absence and as time available. For example, are holidays excluded from both or are absences due to certain legal employment rights (such as time off for trade union duties, time off for dependants and so on) not counted as an absence?

$$\frac{\text{Total absence (hours or days) in the period}}{\text{Total available (hours or days) in the period}} \times 100$$

For example, if the employee is absent for a total of 15 days (three weeks) in a 12-week period, the absence is:

$$\frac{15}{60} \times 100 = 25\%$$

Using previously agreed levels of acceptable absence will help identify whether the organisation needs to take action.

It can be worked out separately for individual departments or groups of employees to reveal particular absence problems.

b How often employees are absent (frequency rate)

The *frequency rate* shows the average number of absences for each employee, shown as a percentage. It does not show the length of each absence period or the employees are absent more than once.

$$\frac{\text{Number of spells of absence in the period}}{\text{Number of employees in the period}} \times 100$$

For example, if in one month an organisation employed, on average, 60 workers, and during this time there were a total of 15 spells of absence, the frequency rate is:

$$\frac{15}{60} \times 100 = 25\%$$

By counting the number of employees who are absent at least once in the period, rather than the total number of spells of absence, this calculation gives an ***individual frequency rate***.

c Bradford Factor

The Bradford Factor, developed by Bradford University, identifies persistent short-term absence for individuals, by measuring the number of spells of absence. It is a useful measure of the cost and disruption caused by this type of absence. It is worked out using the following.

$S \times S \times D$

S = number of spells of absence in 52 weeks taken by an individual

D = number of days of absence in 52 weeks taken by that individual

For example

10 one-day absences: $10 \times 10 \times 10 = 1,000$

5 two-day absences: $5 \times 5 \times 10 = 250$

2 five-day absences: $2 \times 2 \times 10 = 40$

1 10-day absence: $1 \times 1 \times 10 = 10$

6 Dealing with absence as a conduct problem

6.1 Persistent, short-term absence due to illness where there is no specific medical cause

This can be dealt with by:

- holding return-to-work interviews;
- following disciplinary procedures for unacceptable absence;
- reviewing attendance (see 6.1c);
- giving line managers information about sickness absence;
- involving line managers in managing absence; and
- involving occupational health professionals.

a Return-to-work interviews

Many organisations consider the return-to-work interview to be an essential control measure which shows concern, particularly about short-term or casual absences. If it is properly prepared and sensitively handled, it can:

- show that management appreciates the member of staff returning to work;
- show concern for the person's health;
- show that management is determined to deal with each absence and the reason for it;
- explain the effect the absence has had on the organisation; and
- update the individual's absence record, find out if it is likely to happen again and formally review whether further action (for example, disciplinary action) is needed.

How each interview is handled will depend on the circumstances of each case, so it is important that it is prepared properly. If this is always seen as a simple formality, for example, to sign a company self-certificate, it will probably have little effect and could give the impression that management accept any 'excuses'.

When carrying out these interviews, employers should do all that they reasonably can do to find out whether an employee has a 'disability', as defined by the Disability Discrimination Act, where this is not already apparent. The Act applies to **all** organisations, even small organisations. You can get more information and advice from the Equality Commission for Northern Ireland (website www.equalityni.org, phone 028 9050 0600).

Return-to-work interviews can help make sure that short-term absence problems are identified at an early stage. They also give managers an opportunity to discuss with staff any other issues which might be causing the absence.

b Disciplinary procedures for unacceptable absence

Organisations may use disciplinary procedures for unacceptable absence if they want to make it clear to employees that they will not accept unjustified absence and that they will enforce absence policies.

c Review points

Review points are normally used to investigate individual attendance levels which appear to be relatively unsatisfactory within an organisation. Review points could be based on, for example:

- a percentage time lost or a number of days' absence within a period;
- a number of spells of absence within a period; and
- a points index which combines the above, such as the 'Bradford Factor' (see page 10).

The level at which a review point is set will vary from organisation to organisation, and it is not unusual to find that the levels are reviewed over time, for example, as the general absence problem reduces. However, at some stage, organisations should consider what is a reasonable level of absence, as it would be unrealistic to assume that employees will never be absent.

When using review points, organisations must consider what action should be taken once a review point has been reached or passed. Some employers have been known to automatically use their disciplinary procedure, which is unwise due to the fact that discipline might not be appropriate. Ideally, review points should be used simply as a way of *consistently highlighting* individuals, with a view to closely analysing their absence histories. This close analysis should help organisations decide what action, if any, is appropriate in each individual case.

d Disciplinary penalties

If an unacceptable pattern of absence is viewed as misconduct, this is normally treated as a *minor* offence, typically leading to a recorded verbal warning for a first offence. Failure to improve within a reasonable time normally leads to a gradual progression through a procedure – written warning, final written warning and then dismissal. It is important to remember that one of the main purposes of a disciplinary procedure is to give an employee reasonable opportunity to improve his or her conduct. An unacceptable pattern of absence which can be considered to be misconduct should not normally lead to dismissal for a first offence. Employers should always warn employees when they are considering dismissing them. This is usually done at the 'final warning' stage. **The 'statutory dismissal and disciplinary procedures', set out in the Employment (Northern Ireland) Order 2003, should be followed.** There are more details about these procedures in the Labour Relations Agency's Code of Practice, 'Disciplinary and grievance procedures', which you can download from www.lra.org.uk.

e Involving line managers

Line managers have an important role to play, either directly or indirectly, in reducing absence levels. Managers need good communication and interpersonal skills to encourage employees to discuss any problems they may have at an early stage so that they can be given support or advice before matters get worse.

Line managers need to be trained in:

- the organisation's absence policies and procedures;
- their role in the programme for managing absence;
- legal and disciplinary aspects of absence;
- the role of occupational health services;
- review points;
- return-to-work interview skills; and
- counselling skills.

6.2 Unauthorised absence

If employees who are not sick continually take short periods of time off without authorisation, either giving no reason or some reason which, after investigation, the employer does not agree with, a company might choose to treat such absences as misconduct and apply its disciplinary procedure. These situations are not very common, as some employees will give an excuse such as sickness rather than admit the truth which they suspect will not be acceptable. So, in most cases of absence involving misconduct, employers tend to react to unacceptable *patterns*, such as a series of Monday mornings, rather than to single incidents or spells when going through the various stages of their disciplinary procedure. However, where unauthorised absence is concerned, there could be circumstances where the procedure may need to be followed for a single incident.

7 Dealing with absence as a capability problem

The question of whether to continue to employ someone whose ill health, either physical or mental, prevents them from working for a continuous, long period [or several long periods] or causes frequent short absences is often difficult for an employer to resolve. Disciplinary procedures under which warnings for misconduct are given are not appropriate. This would also apply in a case where the frequent sickness absences are for different reasons which are clearly related to a medical condition.

7.1 Genuine long-term sickness

In considering what to do when an employee is absent due to long-term ill health, an employer should take account of the following.

- Whether he or she has communicated with and consulted in person with the sick employee.
 - Whether he or she has asked for the medical opinion of the employee's own GP, of a GP appointed by the employer or of an occupational health specialist.
 - The real effects of the absence on the business, for example, the difficulty in completing work or the amount of disruption caused by the absence.
 - The reason for sickness.
 - Alternatives to dismissal and any 'reasonable adjustments' which could be expected under the Disability Discrimination Act 1995, if relevant and appropriate.
 - Any measures which could help the person return to work.
 - How long the employee has worked for the organisation.
 - The availability of a replacement worker.
- a** Communicating with and consulting the employee.

In communicating with and consulting an employee, the employer should assess the situation regularly throughout the course of the absence, by getting all the facts and keeping the person informed of his or her position. The employer must tell an employee if they are considering dismissing them, and the employee should be given the opportunity to present his or her case. This could include the following.

- The employee's current state of health (and, in particular, whether the employee has a 'disability' as defined by the Disability Discrimination Act).
- The chances of recovery in the short-, medium- and long-term.
- Possible return dates and any help or adjustment the employer could provide.

b Medical opinion

In many situations the employee will not be able to provide all of the relevant information. So, to get a true picture of their state of health and possible return dates, the employer should get a detailed medical opinion as to whether the employee is able to carry out the duties of the contract of employment. This should be from the employee's own doctor first, and then from a company doctor or an independent occupational health specialist.

Employers should be cautious about relying solely on a single medical report from a company doctor without trying to contact the employee's own doctor. If the employer has got the medical opinion of the employee's GP, they should ask for a second medical opinion if, for example, the original report is vague or unhelpful.

Where reports conflict and an employer relies on one, he or she should have good reasons for doing so. If the employee is seeing a specialist consultant, the opinion may be extremely important. There may be times when it would be advisable for the employee to see a specialist, for example, where a doctor's report suggests this course of action.

Before contacting a medical practitioner for an opinion, employers should carefully consider beforehand the type of relevant information which they are likely to need and what the practitioner needs to know to be able to provide a meaningful response. For example, an explanation of the nature of the work should help a doctor form a more helpful opinion on the possibilities of an employee returning to do this.

If an employee asks for an 'adjustment' (see below) to be made because of a disability which is not obvious, an employer may need to ask the employee for evidence that the disability falls under the broad definition of a 'disability' as defined by the Disability Discrimination Act.

An employer who wants an opinion from the employee's GP must first ask for the employee's permission. A request by an employer for a report from a medical practitioner who is or has been responsible for the clinical care of the employee must be in line with the Access to Personal Files and Medical Reports (Northern Ireland) Order 1991. The relevant Part III of this Order is summarised in Appendix 2. The main aim of Part III is to:

- give people who are the subject of reports for employment purposes the right to look at these reports;

- make sure employers who want these reports get the employee's permission before approaching a medical practitioner; and
- set rules for medical practitioners regarding access to and providing these reports.

Whether or not an employee would have to go to a meeting with a doctor appointed by the company would be covered by the contract of employment.

If it is not part of an employee's contract and he or she refuses to meet with a company doctor or refuses permission for an employer to get a medical opinion from his or her own doctor, the employer should tell the employee that a decision on their employment will be made using the information available and that it could result in a dismissal in line with the **statutory dismissal and disciplinary procedures**. In these cases, employers should also explain that they need a medical opinion so that management can come to an informed decision about continued employment.

If an employer acts on the basis of a doctor's report, the employee should be given reasonable opportunity to challenge this report, no matter where it is from.

c Effects of the absence on the business

Once the employer knows an employee's medical position, the employer must decide how long it is possible to wait for the person to return to work and to assess options as to how he or she can meet the needs of the business. The employer is not expected to approach the problem as a medical one. The decision as to what to do is an employment one based on the organisation's needs.

There is no set period of time or number of absences after which an employer may dismiss an employee fairly – each case will depend on the circumstances. However, any decision must always be reasonable.

In considering the effects of the absence on the business, an employer might ask themselves the following questions.

- Just how much damage (cost, disruption) is really being caused by the absence?
- What is the nature of the sickness?

- Is there really an immediate crisis?
- Can the company manage or afford to continue for some time without a replacement or with some reorganisation?
- How long can I wait for the employee to return without the absence having a serious effect on the business?
- Can I recruit a temporary replacement?

If the employee's absence is causing major difficulties because he or she cannot be easily replaced temporarily, the length of time a post can be kept open will be shorter than, for example, in a situation where the employee is one of many carrying out a certain job and where absence is easily covered.

Before deciding on a dismissal, the employer must seriously consider other options such as offering any suitable alternative work which is available. This, for example, could take the form of lighter work, part-time work or even a job where the employee's absence will not cause a serious disruption. This work may however, affect the employee's pay and position.

d Alternatives to dismissal

An employer does not have to create a special job by law, but under the 'reasonable adjustment' conditions (see below) of the disability discrimination law, they could adjust the job slightly if this would avoid having to dismiss the employee. The employee must decide whether to accept the new job, so a job should also be offered even if it means a decrease in wages or change in position. Other measures might involve making 'reasonable adjustments' to aspects such as the job or working conditions, where, for example, these would make it possible for the employee to return and continue working or possibly reduce the need for absence and so any problems for the employer.

e Reasonable adjustments and the Disability Discrimination Act 1995.

By law, employers must consider and, where practical, make 'reasonable adjustments' to avoid possible discrimination such as dismissal, where the employee concerned satisfies the definition of a disabled person under the Disability Discrimination Act 1995. The Act provides a number of examples of 'steps' which employers may have to take, if it is reasonable for them to do so in all the circumstances of

the case. Steps other than those listed in the Act may have to be taken, but this depends on the circumstances.

Those 'steps' listed in the Act are:

- making adjustments to premises;
- passing some of the disabled person's duties to another person;
- transferring the person to fill an existing vacancy;
- altering the person's working hours;
- moving the person to a different place of work;
- allowing the person to be absent during working hours for rehabilitation, assessment or treatment;
- giving the person training or arranging for the person to be given training;
- buying or altering or adding to equipment;
- altering or adding to instructions or reference manuals;
- altering or adding to procedures for testing or assessment;
- providing a reader or interpreter; and
- providing supervision.

A number of these might be particularly relevant in absence situations.

You can get more information and advice on 'reasonable adjustments' from the Equality Commission for Northern Ireland (website www.equalityni.org, phone 028 9050 0600).

f Gradual return to work

Certain measures might help an employee return to work if he or she is clearly unfit to go back to normal full-time hours or to do the normal, full range of duties under the contract. In these circumstances, a gradual return may be possible where normal hours and duties could be introduced gradually. Any arrangement like this should be closely monitored. Other measures might also be considered to avoid

dismissals, such as lighter work in a different job, on a temporary basis.

The plan for a gradual return to work needs to include:

- the goals (that is, different working hours, or a different job role);
- the time period;
- a statement about the new working arrangements;
- the checks that will need to be made to make sure the plan is put into practice; and
- the dates when the plan will be reviewed by the employee and the line manager.

It may be helpful to appoint someone to co-ordinate the return-to-work process. This may include keeping colleagues of the absent employee informed of progress, so that everyone understands the situation and can maintain working relationships.

7.2 Continual short-term absence due to a medical condition

If an employee is continually absent for short periods due to either a single genuine health complaint or other genuine health complaints which are connected to a medical cause, the employer can dismiss them for capability reasons (their skills, abilities, health or any other physical or mental quality). In these situations, the employer must have a medical opinion on the chances of recovery, the likelihood of the unsatisfactory attendance pattern continuing and how long this is likely to last. A reasonable approach would be to treat these situations in the same way as someone with a long-term medical problem.

8 Statutory dismissal procedure

If the employer is considering dismissing an employee because of their capability, they must follow the dismissal procedure described below to avoid penalties at an industrial tribunal. The procedure below only outlines the minimum steps which must be followed by law. Following this procedure in a dismissal situation does not guarantee that an industrial tribunal will find the dismissal 'fair'. As well as following these steps, the employer should act fairly and reasonably in deciding whether to dismiss an employee.

Step 1 - Statement of grounds for action and invitation to meeting

- The employer must set out in writing the employee's alleged conduct or characteristics, or other circumstances, which lead him or her to consider dismissing them.
- The employer must send the statement (or a copy of it) to the employee and invite the employee to come to a meeting to discuss the matter.

Step 2 - The meeting

- The meeting must take place before action is taken.
- The meeting must not take place unless:
 - a the employer has explained the reasons included in the statement to the employee; and
 - b the employee has had a reasonable opportunity to consider their response to that information.
- The employee must take all reasonable steps to go to the meeting.
- After the meeting, the employer must tell the employee his or her decision and tell them about their right to appeal against the decision if they are not satisfied with it.

Step 3 - Appeal

- If the employee wants to appeal, he or she must tell the employer.
- If the employee tells the employer that they want to appeal, the employer must invite them to another meeting.
- The employee must take all reasonable steps to go to the meeting.
- The appeal meeting does not have to take place before the dismissal or other action is taken.
- After the appeal meeting, the employer must inform the employee of his or her final decision.

9 Other absence issues

9.1 Data protection

Employers must be careful to follow the conditions of the Data Protection Act 1998 (DPA) when they collect, use and store information, manually recorded or on a computer, about their employees' absences. Details of an employee's health, either physical or mental, are categorised as 'sensitive personal data' under the DPA. Under the DPA, any organisation must be open about why they are collecting and keeping the information. Staff should know what information about their health is being collected and why. Collecting information about employees' health without them knowing is unlikely ever to be justified.

The Information Commissioner has published an 'Employment Practices Code' which gives more advice and information on data protection law. You can download this code from the Information Commissioner's website at www.ico.gov.uk, or you can contact the Information Commissioner's Office - Northern Ireland, Room 101, Regus House, 33 Clarendon Dock, Laganside, Belfast BT1 3BG (phone: 028 90511270).

9.2 Disability discrimination

Managing employees who become disabled as a result of sickness may mean employers have to make 'reasonable adjustments', as explained in the Disability Discrimination Act 1995, before they can return to their job. The types of adjustments that employers might have to consider include:

- making physical adjustments to the workplace;
- passing some of the disabled person's duties to another person;
- transferring the disabled person to another vacant post, with or without reasonable adjustments being made;
- altering the disabled person's working hours through, for example, part-time working, job-sharing or other flexible arrangements; and
- providing special equipment to help the disabled person carry out his or her tasks, and giving training in how to use the equipment.

You can get more information and advice on 'reasonable adjustments' from the Equality Commission for Northern Ireland (website www.equalityni.org, phone 028 9050 0600).

9.3 Absence and pregnancy

Employers should record pregnancy-related sickness absence separately from other sickness absences. Employers cannot provide different sick-pay arrangements for women who take time off work for reasons related to their pregnancy. However, an employer who includes absence related to pregnancy in any assessment of a worker's sickness record, for example, when making redundancies or for disciplinary reasons, could be open to a claim of sex discrimination.

North Western Health Board v McKenna [2005] Industrial Relations Law Reports, 895

In this case, Mrs McKenna who was employed in Ireland made a sex-discrimination claim under European law because her employer paid sick pay for pregnancy-related illness in the same way as it did for other illness. The employer ran a scheme that paid six months' full pay and six months' half pay in any four-year period. When Mrs McKenna (who was absent for most of her pregnancy due to a pregnancy-related illness) stopped being paid full pay and dropped to half pay, she argued that this was less favourable treatment due to her pregnancy.

The Irish Court held that she had been discriminated against because of her sex, but the European Court of Justice held that a sick-pay scheme which treated pregnancy-related illness in the same way as any other illness was not considered to be sex discrimination under European law. It held that, under community law, employers do not have to pay workers who are absent for pregnancy-related illness full pay as long as the amount of pay they do receive is not so low as to go against the community law aim of protecting female workers, in particular before giving birth.

10 More help

Labour Relations Agency

As part of our programme of promoting good employment practice and preventing disputes arising in the workplace, we (the Labour Relations Agency) hold a series of seminars led by experienced agency staff. The seminars are designed to promote and develop good practice in the relevant area.

In the area of managing absence from work, we have developed a seminar which aims to help anyone who is dealing with or affected by absence. It raises awareness of how to handle absence fairly and consistently. The seminar, which runs for about two hours, covers all the issues dealt with in this guide.

If you would be interested in going to this seminar, please contact:

The Seminar Co-ordinator
Labour Relations Agency
2-8 Gordon Street
Belfast BT1 2LG.
Phone: 028 9033 7424
E-mail: alan.wilson@lra.org.uk

If you prefer, you can also register on-line at www.lra.org.uk.

Equality Commission for Northern Ireland

The Commission has produced a range of information, advisory and policy publications related to disability. You can get these, and more information and advice, from:

The Equality Commission for Northern Ireland
Equality House
7 - 9 Shaftesbury Square
Belfast BT2 7DP.
Phone: 028 9050 0600
Website: www.equalityni.org

The Information Commissioner

The Information Commissioner has published an 'Employment Practices Code' which gives more advice and information on data protection law. You can download this code from the Information Commissioner's website at www.ico.gov.uk, or you can contact the Information Commissioner's Office - Northern Ireland, Room 101, Regus House, 33 Clarendon Dock, Laganside, Belfast BT1 3BG (phone 028 90511270).

Appendix 1

What to include in an absence-management policy

You should develop your absence-management policies and procedures in **consultation** with line managers and employee representatives. If your organisation recognises a trade union, you should also involve them.

An absence-management policy could include the following.

- How the employee should tell you if they are ill, late for work, or absent for other reasons.
- When an employee should send in a self-certificate or medical certificate.
[Under statutory sick pay rules, self-certification is only needed from the fourth day, and a medical certificate from the eighth day of an absence.]
- Any sick-pay arrangements. *[This should also be covered in the written statement of terms and conditions of employment.]*
- Possible procedures for using your own doctor or medical adviser.
- The need to go to a return-to-work interview.
- When disciplinary measures will be taken.
- Who is responsible for keeping attendance records.
- Absences which are not covered by the attendance-management policy:
 - *Holidays*
 - *Authorised leave of absence (for example, bereavement or compassionate leave)*
 - *Pregnancy-related absence or illness*
 - *Absence connected with a condition as defined by the Disability Discrimination Act*
 - *Absence connected with an injury at work*
 - *Emergency time off for looking after dependants*
 - *Adoption leave*
 - *Parental leave*
 - *Paternity leave*
 - *Any other relevant absences, for example, education and training courses, absence on public duties, and on trade union duties and activities*
- Reference to any other relevant policies, for example, alcohol and drug misuse, health and safety, discipline and grievance.

- What disciplinary measures may be taken against an employee who you believe is abusing the system.
- Procedures for dealing with absence as a conduct problem *[For information on dealing with an employee's illness fairly, see page 11 in this guide - Dealing with absence as a conduct problem].*
- Procedures for dealing with absence as a capability problem in the case of an employee who has a long-term illness or disability. *[For more information see page 14 in this guide - Dealing with absence as a capability problem].*
- Any help that the organisation can give the employee.
 - Medical help - such as physiotherapy
 - Practical help and support - such as transport to work
 - Specialist help - such as counselling
- Any early-retirement policy that applies to the employee. [Do not force this on an employee.]

Please contact us for more help in dealing with absence.

Appendix 2

Access to medical reports for employment purposes

The Access to Personal Files and Medical Reports (Northern Ireland) Order 1991

What Part III of the Order covers

Part III of the Order applies to individuals for employment purposes.

'*Employment purposes*' are defined by Article 6 of the Order as 'the purposes in relation to the individual of any person by whom he is or has been, or is seeking to be, employed (whether under a contract of service or otherwise)'. So, the Order applies to employees, future employees and self-employed people who work under a contract for personal services.

Article 6 also defines a *medical report* as 'a report relating to the physical or mental health of the individual, prepared by a medical practitioner who is or has been responsible for the clinical care of the individual'. The medical practitioner could be the individual's GP, a hospital doctor or a consultant, depending on who is responsible for the clinical care of the individual. This definition does not include any report prepared by a named independent doctor or company doctor (as long as that they have not been responsible for the 'clinical care' of the individual).

Notification

An employer or future employer cannot apply to an individual's doctor for a medical report on the individual for employment purposes unless:

- the employer tells the individual that this is what he or she plans to do; and
- the individual has agreed to the employer applying for the report [Article 8(1)].

Employer's notice to the individual

The notice the employer gives to the individual must tell the individual their various rights under the Order, as follows.

- That the individual can refuse to allow the employer to apply to their doctor for a medical report [Article 8(2)].
- That if the individual does give their permission, they will be entitled to have access to the report. If the individual wants to see the report, the employer must tell the doctor at the time of applying for a medical report, and also tell the individual that he or she is applying for a report [Article 9(1)].
- That the individual can see the doctor's report, if they want to, before the doctor passes it to the employer [Article 9(2)].
- That the individual has the right to refuse to give permission for the report to be passed to the employer [Article 10(1)].

- That the individual has the right to ask the doctor to correct mistakes or, at least, to record that there is a difference of opinion over items in the report [Article 10(2)].
- That the individual has the right to see any medical report relating to him or her that the doctor has provided for employment purposes during the previous six months [Article 11(2)].

It is no longer the case that an employer can simply get an employee's or future employee's general permission to get a medical report. The employer must tell the employee all their rights.

Employer's notice to the doctor

The employer who asks for a medical report from an individual's doctor must also give the doctor certain information when they apply.

- That the individual who is to be the subject of the report has asked to see the report before it is passed to the employer [Article 9(1)].
- Where the above is the case, that the doctor must not provide the report until the individual has seen it and that they have corrected any mistakes or recorded a difference of opinion over items in the report [Article 9(2)(a)].
- That the doctor may pass the report to the employer in any case when 21 days have passed from the date of the employer's application without the doctor having received any communication from the individual about access to the report [Article 9(2)(b)].

All notices needed under the Order must be in writing [Article 14(1)(a)].

Access [Article 9]

Article 9(4) of the Order defines giving an individual access to a medical report as:

- making the report (or a copy of it) available for inspection; or
- providing a copy of the report.

The doctor may charge a reasonable fee to cover the cost of supplying a copy of the report, as long as the individual has asked to see a copy or agreed to receive one.

An individual who is the subject of a medical report and who wants to have access to it before it is passed to the employer has 21 days to contact the doctor to make arrangements to see it. This 21-day period starts on the date the employer applies for the report, or if the individual contacts the doctor at any time before the report is passed to the employer to say that he or she wants to see it, from the date the individual gives notice. If the 21 days pass without any communication from the individual, the doctor may then pass the report to the employer. However, the individual can still ask to see it later on.

Correcting mistakes

If an individual has been given access to a report, the doctor must not pass it to the employer unless the individual has given his or her permission [Article 10(1)]. The individual may also ask the doctor to amend any part of the report which he or she considers to be incorrect or misleading. The doctor may or may not agree to do this, and the individual is not allowed to say what should go in the report. However, the Order does allow an individual to ask the doctor to attach to the report a statement of the individual's views about any part of the report which the doctor refuses to amend. When this happens, the doctor **must** attach a statement to the report [Article 10(2)(b)]. Any request to a doctor to amend a report or to attach a statement of the individual's views must be in writing [Article 10(3)].

Keeping reports [Article 11]

A doctor must keep a copy of any medical report he or she has provided for employment purposes for at least six months from the date they provided it [Article 11(1)]. Everyone has the right to see any medical report relating to them provided by a doctor for employment purposes during the previous six months [Article 11(2)].

Exemptions [Article 12]

If the doctor considers that it would not be in the best interests of the individual for him or her to see part or all of the medical report, the doctor does not have to give an individual access to the medical report in the normal way if the following circumstances apply.

- Where any part of the report would be likely to cause serious harm to the physical or mental health of the individual, or other people [Article 12(1)].
- Where the information provided would show how the doctor is going to treat the individual [Article 12(1)].
- Where the report includes information about another person (unless that other person has agreed to their information being released) [Article 12(2)].
- Where the report would reveal the identity of another person who has given the doctor information about the individual. Again, there is an exception if the other person has agreed or if the other person is a health professional (not necessarily a doctor) who has been involved in looking after the individual [Article 12(2)].

The doctor may decide that the whole report is covered by one or more of the exemptions listed above. In that case the doctor must tell the individual and the doctor must not pass the report to the employer unless the individual has agreed to this in writing [Article 12(4)]. [The 21-day rule, covered in Articles 9(2) and 9(3), does not apply in these circumstances.] If the doctor decides that the employer should not see part of the report because of one or more exemptions, he or she must tell the individual.

The individual can challenge a doctor's reliance on the exemptions in the County Court by claiming that the doctor has failed to follow the Order (see 'Enforcement' below).

Enforcement [Article 13]

If the County Court is satisfied that any person has failed or is likely to fail to follow any condition of the Order in connection with a medical report, the court may order that person to follow the Order. This is the only penalty for failing the Order.