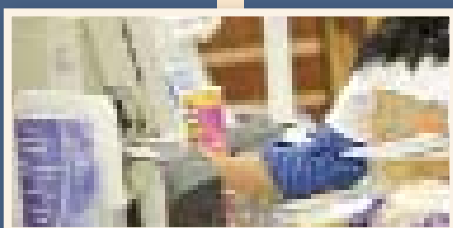
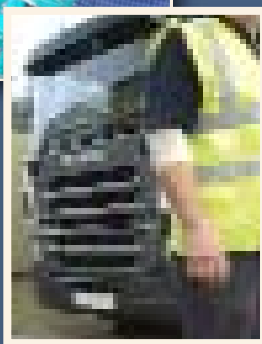
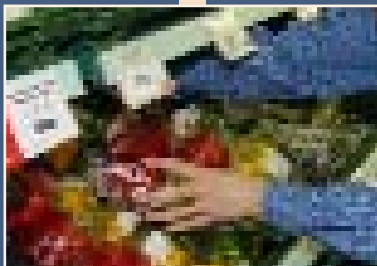
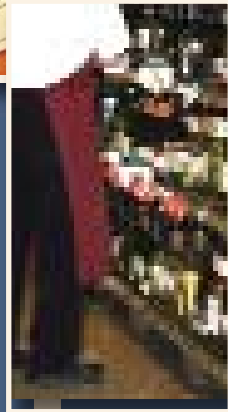


Sickness Absence Policies



Usdaw

*Union of Shop, Distributive
and Allied Workers*

Executive Council Statement
to the 2009 ADM

Foreword



In many workplaces there is no bigger issue after pay than sickness absence management. In recent years, a growing number of employers have adopted absence policies in an attempt to improve the attendance levels of the workforce.

Employers have identified absence as a significant cost to the business. In the current difficult economic climate, employers will be looking at how they can cut costs to protect profits. More and more employers look at absence levels and see one cost to the business that can be tackled through absence management.

It comes as no surprise that most employers have some form of absence management policy. Absence management is obviously here to stay.

Usdaw is committed to ensuring that absence policies are fair and do not victimise employees who are off work sick. We do not want absence policies putting pressure on or punishing staff who are genuinely ill.

A poor absence policy just looks at absence levels and prescribes action against an employee regardless of the individual circumstances. A fair absence policy supports staff back to work taking into consideration their illness.

An absence policy may use trigger points for reviews. It may have rigorous return to work interviews. But a fair absence policy will allow and encourage managers to use discretion in dealing with employees who are suffering from ill-health.

Usdaw is committed to providing good advice and representation for all members subject to absence management. We need to ensure that all Usdaw reps are trained and able to represent members over absence as members need individual advice and representation on sickness absence policies.

Usdaw works at a national company level to ensure fair absence policies. At the same time, the Union represents members in the workplace to ensure they get a fair hearing and reasonable treatment over individual absence levels.

Negotiating nationally and representing locally – these are the two parts of an effective Union approach to sickness absence management.

A handwritten signature in black ink that reads "John Hannett". The signature is written in a cursive, flowing style.

John Hannett
General Secretary

Contents

	Page
Section 1: Employers' Views on Sickness Absence	4
Section 2: Sickness Absence – the Real Facts	6
Section 3: Absence Management Tools Used by Employers	8
Section 4: Absence Policies – Case Studies	10
■ Sainsbury's	
■ Tesco	
■ Marks & Spencer	
■ Morrisons	
Section 5: The Trade Union Response to Absence Management	14
Section 6: The Key Role of the Usdaw Rep	16
Section 7: Disability Discrimination and Absence Management	18
Conclusion	20

Section 1: Employers' Views on Sickness Absence

Employers have identified sickness absence as a major issue that needs to be addressed as days lost through sickness absence are a big cost to business. The assumption made by many employers is that sickness absence needs to be tackled and that effective management policies can reduce absence levels. This section looks at what the employers' organisations are saying on sickness absence.

The Confederation of British Industry (CBI), is the leading organisation of UK employers and it sees managing sickness absence as a big priority. Each year the CBI holds a major Absence Management Conference and it carries out an annual absence survey.

The latest survey results released in May 2008 found that:

- Absence from work cost the UK economy £13.2 billion in 2007.
- Average direct cost of absence is £517 per employee.
- This equates to 3.1% of payroll.
- There are indirect costs, such as lower customer satisfaction and lower productivity, from having less experienced staff covering for those not at work.

The Chartered Institute of Personnel and Development (CIPD), the leading professional body for human resources and personnel management, estimates that:

- Absence is averaging at eight days per employee per year.
- The average cost is £666 per employee per year.
- Smaller organisations with less than 100 employees record absence levels at 6.1 days.

- Bigger employers with 2,000 or more members of staff have absence levels of 9.9 days per year.
- Short-term absence, up to seven days, accounts for 74% of total time lost due to absence.

Employer organisations have identified sickness absence as a 'serious and expensive' challenge. The cost to business means that absence management is likely to be inevitable but the type of absence policy will depend on employers' attitudes to these staff absences.

'Sickies and long-term absence give employers a headache'

The press release accompanying the 2008 CBI Absence Survey made some big assumptions over whether a lot of absence for sickness was genuine. The statement was headed 'sickies and long-term absence give employers a headache'. It went on to make the claim that 'of the days lost to absence more than one in ten are thought to be non-genuine'.

The CBI estimates that 'two-thirds of employers think that some staff are using them (days off sick) to extend weekends' and 'a third of employers suspect sickies are used for special events like birthdays and major football games'.

Many employers believe that there is a culture of workers taking the odd 'sickie' to supplement holidays and to have a break from work. The CBI concludes that 'dealing with bogus sick days' is a key challenge for employers.

‘Nobody expects anyone to be at the office checking their emails the day after a heart bypass’

The CBI makes a distinction between short-term absence and longer periods off work for a more serious illness:

- ‘Long term absence (20 days or more) also continued to be a serious concern’.
- ‘Although only 5% of absence spells become long-term, they accounted for a massive 40% of all time lost’.

Making a distinction between short-term and longer periods of illness is important but are employers more sympathetic to long-term sickness?

In contrast to its statement about ‘dealing with bogus sick days’, the CBI talks about ‘helping those with long-term illness return to work’. Employers are advised that ‘those with long-term illnesses need time to recover – nobody expects anyone to be at the office checking their emails the day after a heart bypass’.

Whether all employers put this commitment of supporting those with genuine long-term illness into practice remains to be seen.

Summary

Employers view sickness absence as a big cost to business that needs to be reduced. Many employers believe there is a bogus ‘sickie’ culture that needs to be tackled but employers organisations are signed up to supporting those who are genuinely off work sick.



Section 2: Sickness Absence – the Real Facts

The last section outlined the claims and assumptions made by employer organisations about absence levels. In this section, we look at the real facts about sickness absence in the UK workplace.

The rise of a sick note culture?

Many employers and newspapers make statements about a growing sick note culture.

What are the facts?

The most recent Workplace Employment Relations Survey (WERS) estimates that the average rate of absenteeism equates to the loss of 5% of working days per workplace. This shows little change from 1998 when the WERS survey found absence levels of 4.8%.

Despite the headlines, absence levels are not rising and are roughly the same level as a number of years ago. Workplaces are not gripped by a culture of workers throwing a 'sickie' when they fancy an extra day off.

Have absence management policies reduced absence levels?

The Chartered Institute of Personnel and Development (CIPD) publish an annual survey that reports on the level of absence in the UK economy.

In 2004 the CIPD found that absence was averaging at 9.1 days per employee. In the following years this went to 8.4 days in 2005, down to 8 days in 2006, back up to 8.4 days in 2007 and back down to 8 days in 2008.

From this evidence it concludes, 'The CIPD's annual absence survey has been characterised by a 'yo-yo' effect in the overall level of absence since it started in 2000'.

This yo-yo effect is interesting as the last five years have also seen an increase in absence management in UK workplaces. The expansion of absence management policies appears to have had little impact on absence levels.

This would seem to suggest that most sickness absence is genuine as you would expect the number of bogus sick days to fall dramatically as a result of more intensive absence management.

How do UK sickness absence levels compare to the rest of Europe?

If the UK economy suffers from a sick note culture then we would expect to see UK absence at much higher levels than other similar countries. So, how do absence levels in the UK compare to the rest of Europe?

'British workers are actually much less likely to take sick leave than workers in other European countries'.

(TUC: Sick note Britain? – countering an urban legend).

In Britain a lower proportion of working time is lost to short-term absence than any other European country except Denmark. Only Austria, Germany and Ireland lost a lower proportion of working time to long-term absence. When the UK is compared to similar economies it turns out that the UK worker is less likely to take sick leave.

Even the CBI, despite its statements about the bogus 'sickie' culture, has admitted that it believes 88% of absence is genuine.

The facts speak for themselves: workplaces in the UK are not gripped by a sick note culture, the vast majority of absence is genuine and absence levels are no higher than other comparable economies.

Are workers turning up to work while ill?

Employers often believe there is a problem of absenteeism, but there may be more of a problem with workers turning up to work while ill. The TUC has labelled this 'presenteeism'.

It is estimated that 75% of working adults have been to work when really they were too ill. In the same survey, one in three workers reported that they returned to work before they were fully recovered (*TUC/BMRB survey, 2004*).

Research by AXA PPP Healthcare estimates that one in five employees across the economy have booked annual holiday entitlement to cover periods of illness.

Workers reported that they feel compelled to turn up to work due to work pressure and because people depend on them. People do not want to let their colleagues down. Most employees take pride in their work and are worried that the job will not be covered or done as well if they are absent from work.

Many commentators talk about absenteeism meaning they believe people call in sick with minor ailments when really if they were committed they would drag themselves into work. These commentators see absenteeism as a workforce discipline problem that needs to be tackled.

The reality is that many employees feel under pressure to attend work even when they really are not fit for work. People turning up for work who are ill will spread germs to the rest of the workforce and can be a route to long-term absence.

Summary

The growth of absence management in the last five years has had little impact on absence levels suggesting that the vast majority of sickness absence is genuine. The levels of sickness absence in UK workplaces compares favourably with the rest of Europe. Instead of UK workplaces having a problem with absenteeism, there is a concern that workers are feeling under pressure to turn up for work when really they are too ill to do a productive day's work.



Section 3: Absence Management Tools Used by Employers

As we have seen from earlier sections, employers want to manage sickness absence more closely and tackle levels of absence. This section looks at the most common absence management tools used by employers.

Return to work interviews

'Return to work interviews are rated as the most effective approach to managing short-term absence'. (*CIPD 2008 Absence Management Survey*).

Employers were asked what they believe are the most successful absence management tools and nearly three-quarters (70%), replied that return to work interviews are among the top three ways to manage short-term absence.

Complex and detailed absence management policies are often introduced by companies but the interesting conclusion from the CIPD survey is that managers find that just holding return to work interviews is the most effective absence management tool.

Trigger mechanisms to review attendance

After return to work interviews the next most used attendance management tool is a trigger mechanism to review attendance:

'Many employers also operate a system of 'trigger points' to identify employees who persistently take occasional days off work. Such individuals are then subject to an attendance review where improvement targets are set'. (*Incomes Data Services HR Study 842 – Absence Management*).

Other absence management tools

Among employers the most popular absence management tools after return to work interviews and trigger mechanisms are:

- Disciplinary procedures for unacceptable levels of attendance.
- The line manager taking primary responsibility for managing absence.
- Restricting sick pay.
- Occupational health involvement.
- Employee absence figures given to line managers.
- Managers trained in managing absence.

A growing number of employers are restricting sick pay. Currently over half (58%) of private sector employers restrict sick pay in some way.

Restricting sick pay through waiting days

Many employers do not pay sick pay for the first three days of sickness absence. This policy has its roots in the Statutory Sick Pay Scheme.

Statutory Sick Pay (SSP) is only paid for absences beyond the first three days of absence. Many employers provide company sick pay that is better than SSP. In these examples, the employee receives the company sick pay and the employer can claim SSP back from the State.

As a result, a number of employers have opted to not pay sick pay for the first three days and this financial penalty for absence is increasingly viewed by employers as a tool to reduce absence.

Family-friendly policies to achieve improved attendance

Workers with family commitments may at times struggle to achieve full attendance due to children falling ill or other caring responsibilities. Without good family-friendly policies, this can lead to an increase in short-term absence. Allowing some flexibility around hours and shifts may help boost workforce attendance levels.

Employers are starting to acknowledge the need to recognise that many employees have family and caring responsibilities at home. 64% of employers allow leave for family commitments and they recognise that such leave is an 'absence management tool for short-term absence'.

However, there is still room for improvement and many employers have not fully recognised the importance of family-friendly policies and how such policies can benefit business. For example, less than half (40%) of private sector employers offer opportunities for flexible working or any form of flexible working, however, over half of these employers restrict sick pay.

Summary

The vast majority (three-quarters) of employers use:

- Return to work interviews.
- Disciplinary procedures for unacceptable absence.
- Sickness absence information given to line managers.
- Trigger mechanisms to review attendance.



Section 4: Absence Policies – Case Studies

This section looks at the absence management policies operating in some of the biggest companies that Usdaw members work for. These examples show us how the absence policies experienced by Usdaw members on a day-to-day basis are based on the most common absence management tools identified in the last section.

The case studies illustrate how workers' experiences of absence policies are similar across the economy. The one big difference is in the experience of workers employed by a company that refuses to recognise a trade union. In this section we see how the absence policy of a non-union employer (Marks & Spencer), is stricter in its application and harsher in its impact than the schemes operating in workplaces where Usdaw is recognised.

Organising the workforce and getting union recognition will be the one thing that will have the biggest impact on how workers are treated under absence policies.

Sainsbury's

All Sainsbury's permanent employees with more than six months' service and all temporary employees with more than 12 months' service, are entitled to company sick pay which is normally equivalent to salary or basic wage. It does not include any store premium or market plusage payment.

Sainsbury's operates a sickness and absence procedure which has a key role for all Departmental Managers regularly reviewing absences.

Following an absence, a return to work interview takes place. The return to work interview is based on sickness and/or unauthorised absence occurrences during the past 12 month rolling period. After the third absence it is possible for a disciplinary hearing to be considered appropriate. This may lead to a formal verbal warning.

A fourth absence could lead to a formal written warning and a seventh absence may lead to dismissal. However, progression through the various stages is not automatic as each absence occurrence is treated on its merits. Where the return to work discussion or disciplinary hearing highlights special reasons for the absence a 'No Action Taken' decision should be made.

Managers are told to handle long-term sickness absences in a sympathetic manner. Contact is to be maintained with the employee at regular intervals throughout the illness, either through phone calls or through visits. During all discussions with the employee throughout the period of illness, the company is committed to consulting with the individual to consider her/his view before any important decision is taken.

Arrangements for a medical assessment are to be made after four/six weeks absence in order to determine the extent and likely duration of the medical condition and if treatment is needed, how soon it will take effect.



Supporting your attendance policy

Tesco's attendance management policy is called supporting your attendance.

Supporting your attendance is based on 'triggers' of 3% unplanned absence or three separate occasions of absence in a rolling 26 week period.

All staff have a welcome back meeting on their return to work where their absence level is calculated. If it has reached either of the triggers then staff are invited to an attendance review investigation meeting to discuss their absence. If the triggers have not been reached then no further action is taken.

The purpose of the attendance review investigation meeting is to address the root cause of an absence and identify any practical steps that either the company or the individual can take.

The meeting has to be held within the seven days following an individual's return to work and the individual is entitled to be represented by an Usdaw rep.

The attendance review investigation meeting is not a disciplinary meeting. Rather, it considers the individual's absence history and discusses the reasons for the latest absence and other absences over the 26 week period. The meeting considers whether there are any mitigating circumstances or other reasons that may lie behind an individual's absence.

Any absence that is covered as a 'mitigating circumstance' is automatically taken out of an individual's absence percentage and no further action will be taken.

There are three possible outcomes of an attendance review investigation meeting:

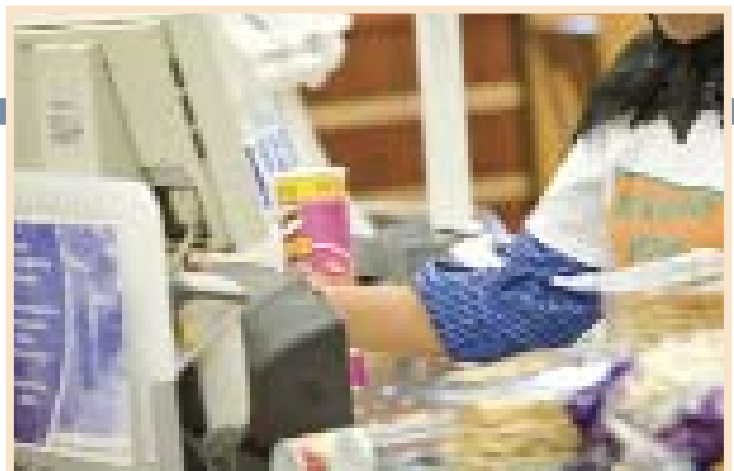
- No further action – for example where absences have been found to be due to one of the 'mitigating circumstances'.
- Next steps – actions that can be taken by either the company or the individual to help improve attendance.
- Arranging a disciplinary meeting.

If the outcome is a disciplinary meeting the individual will have a further meeting after the attendance review investigation meeting. Again, the individual is entitled to be represented by an Usdaw rep and Usdaw reps are represented by their Area Organiser.

If it is decided to take disciplinary action then the individual has the right of appeal as per the normal company disciplinary procedures.

Other absence management policies

Tesco retail staff who started with the company after 4 July 2004 do not get any sick pay for the first three days of illness however, staff who started with Tesco before this date get sick pay from day one.



Marks & Spencer

The Marks & Spencer Sickness Absence Scheme is based on periods of absence becoming building blocks to disciplinary action. Absences of eight shifts in 26 weeks triggers the first disciplinary; absences of six further shifts will trigger the second disciplinary.

An employee does not have to be absent for a full shift for it to count as absence. It can be part of a shift. In respect of a part shift this can include the employee going home half an hour early due to illness. Absence does not count towards the trigger if Marks & Spencer send an employee home and/or to hospital.

At the first trigger there is an informal discussion with the manager. A record of the discussion, however, remains on the employee's record for the lifetime of the employment. The first trigger may also result in a written warning.

The employee must inform the company on the day they are first absent; failure to do so may result in disciplinary action. This may include suspension. It also counts as a building block to the triggers.

Some of the main features of the Marks & Spencer policy are:

- Trigger one results from absence on eight shifts in a rolling 26 week period – this may result in a written warning, possibly a final written warning.
- Trigger one also results in a fixed penalty being issued which withholds any cost of living payment or rise resulting from the salary review.
- Informal discussions were removed from the new absence management policy.
- Verbal warnings have been removed from the new absence management policy meaning the first stage of any action is a written warning.
- If an employee goes home during a shift, regardless of how much of the shift they have worked, it counts as a period of absence.
- If trigger one has been hit, an employee needs just six, rather than eight, absences/part absences, to start trigger two (also in a rolling 26 week period).

Absence impact on pay

Any employee with an ongoing disciplinary sanction at the time of the pay increase does not receive the pay increase until the following year and, therefore, receives last year's pay rise at the same time as their colleagues receive this year's pay rise.

The bonus is not paid to staff if they are on a disciplinary sanction at the point the bonus is paid. They will only receive the bonus when the sanction has elapsed.

Morrisons

Company sick pay

Morrisons' sick pay scheme applies to employees upon completion of a minimum qualifying period of one year's service. Employees with less than three years' service do not get any sick pay for the first three days of illness. The rate of sick pay is 85% of basic contractual hourly pay for each qualifying day/shift.

Morrisons' Absence Policy

Morrisons' absence procedure requires all employees to report any absence as soon as they are aware that they are unable to attend work, at the absolute latest one hour prior to the start of their shift. Contact must be made on a daily basis unless the employee is informed otherwise by the Personnel Manager.

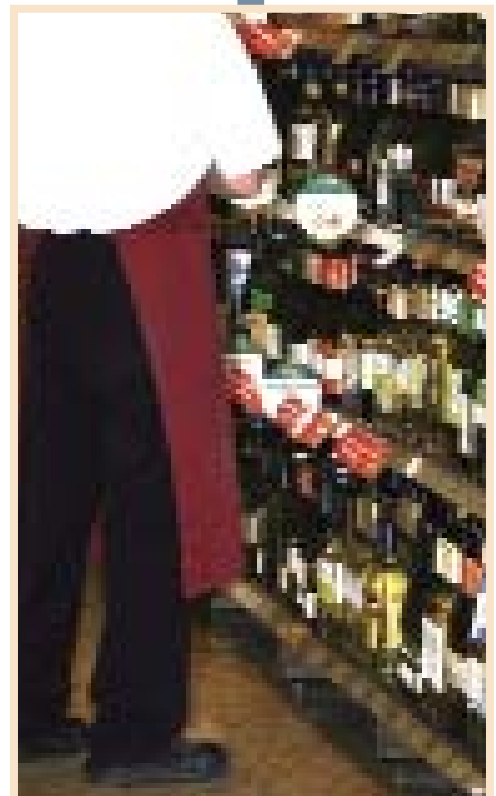
Morrisons uses a formula of 4% as a benchmark figure with which to monitor employees' attendance records and individual absence levels.

There are different procedures for short-term absence and long-term absence. Morrisons defines short-term absence as a continuous or cumulative absence from work due to ill-health for a few days or an accumulation of less than four weeks.

When returning to work, employees attend a return to work meeting which aims to establish the reason for the absence and seeks to improve attendance. The return to work meeting checks that there are no personal or work-related problems causing the absence. Any adjustments that may be necessary, eg change of hours, department, etc are also considered. If the pattern of absence persists, the manager may consider using the disciplinary procedure.

The company views long-term sickness absence as a major drain on its resources which can be drastically reduced if managed. Personnel Managers arrange a meeting by telephone or letter in order to identify the individual's reasons for absence. A further visit will take place within four weeks.

In some cases, it may be considered necessary to arrange a visit with the company Medical Advisor to discuss with the employee any health problems. An interview with the company Medical Advisor is not compulsory. However, refusal may lead to the company making a decision based on the information available.



Section 5: The Trade Union Response to Absence Management

The cost to business of working days lost through absence means that absence management will remain a priority for employers. This section looks at the trade union response to absence management.

Working for fair absence policies

'Unions can help organisations manage sickness absence effectively: in promoting rehabilitation, return-to-work planning, monitoring progress and in discussions about adjustments to or changes of job responsibilities. Unions can help fashion family-friendly policies or deal with conflicts at work'. (*TUC report: Sick note Britain? – countering an urban legend*).

The trade union approach is to work for fair absence policies that guarantee all employees are dealt with in a way that is free from favouritism and victimisation. Trade unions can play a key role in working for fair absence management policies and ensuring staff get advice, representation and a fair hearing from management.

Treating people fairly does not always mean treating everyone the same as each individual's health and ill-health can vary.

Any absence policy should:

- Look at an individual's recent absences.
- Consider the health of the employee.
- Look at an employee's individual circumstances including taking into account whether they are disabled, and;
- Take into consideration the past record of attendance.

There are too many reports of employees facing the threat of disciplinary action for higher than average absences due to a recent bout of ill-health after many years of very good attendance. Absence policies should support, not victimise, employees who are suffering from ill-health.

'Employers should not forget that they are, ultimately, dealing with people – the vast majority of whom will be genuinely ill'.

(*IDS HR Study 842 – Absence Management*).

Fair absence policies allow for manager discretion

'Care needs to be taken that the procedures do not become too prescriptive as this may be counter-productive', is the view expressed by Income Data Services (IDS) who go on to advise employers to:

'Allow managers some leeway in how the policy is applied, giving them the flexibility to assess and deal with each individual case on its own merits within a general framework'.

(*IDS HR Study 842 – Absence Management*).

Many sickness absence policies have trigger points where a more detailed review is triggered by a number of absences within a certain period or a specified number of days or a combination of the two. There is no problem with a trigger system as long as it only triggers a review and does not automatically trigger disciplinary action.

Return to work interviews are for managers to assess whether the absence was necessary and to let the employee know their absence has been noted. But a fair absence policy will not treat a return to work interview as an early stage in a disciplinary. Such meetings should also be about assessing what support the employee needs upon return and updating the employee on any work developments that took place while they were off work.

Raising attendance levels through improving jobs and the workplace

‘Arguably the most effective way to manage sickness absence is to tackle the underlying causes. Many employers are now recognising the importance of good morale and motivation in creating a positive attendance culture. If employees are engaged in their work, perceive they are being fairly rewarded, see their company as a good place to work and believe they have some influence or control over their job, they are less likely to take time off’.

(IDS HR Studies 842 – Absence Management).

Trade unions play an important role in ensuring that workplaces are healthier, health risks are reduced and employees are better supported to attain maximum attendance:

‘Positive sickness absence policies, developed in partnership with unions can make positive inroads into reducing absenteeism, especially if combined with good preventive measures’.

(TUC)

The Department of Health came to the conclusion that ‘bad jobs may make people ill’. The ‘Choosing Health’ report published in 2004, highlighted ‘persuasive evidence’ that ‘a lack of job control, monotonous and repetitive work and an imbalance between effort and reward’ can lead to ill-health.

If you make the job interesting, worthwhile, give people a say at work and reward them properly then they will turn up more often than other staff who feel disenchanting, disillusioned and underpaid.

‘If dissatisfaction with particular work issues such as poor job design, work overload, relationship conflict, ineffective management or bullying – is the real reason for the absence, it is vital that these are teased out and discussed with the employee’.

(ACAS 2007)

‘A union friendly Britain would be a healthier Britain’.

(TUC)

Summary

Absence management is here to stay and the trade union response is to work for fair absence policies that supports, and does not victimise, workers who are off work with short or long-term illness. Trade unions can play an essential role in promoting healthier workplaces and tackling some of the workplace issues that are resulting in sickness absence.



Section 6: The Key Role of the Usdaw Rep

This section looks at how Usdaw reps can play a key role in ensuring that members get the necessary advice and representation over absence management issues.

The role of the Usdaw rep in representing members

Workers have the right to be accompanied by a Union rep (or another work colleague) to any disciplinary hearing. The employee should inform the employer that they wish to be accompanied/represented. If the rep or companion is not available ACAS advises the worker to offer an alternative time and date which is reasonable and within five working days.

While the worker has a right to be accompanied at a disciplinary meeting, no such right applies to the more informal return to work meetings. Sometimes it is unclear whether a meeting is a disciplinary hearing or a more informal review meeting. A disciplinary hearing is a meeting that could result in the issue of a formal warning.

A Union rep accompanying a member to a disciplinary meeting has the right to address the meeting to put the worker's case, sum up the case and respond on the member's behalf to any view expressed at the hearing. However, she/he is not permitted to answer questions on behalf of the worker.

The rep has the right to confer with the employee during the hearing and can also ask for adjournments to advise the member, although the employer is not legally obliged to agree to all requests for adjournment.

For employees to get a fair hearing it is essential that they get union representation to check the facts, represent the member's case in the best possible light and if necessary question and challenge the manager's case.

The Union rep needs to ask a few questions that will form the basis of the member's case:

Is the member above the absence levels that trigger the next stage of review?

Nearly all absence policies have a formula whereby levels of absence trigger the next stage of review/action. It is always worthwhile to check the manager's calculation and record of absences. It is surprising how often managers make simple mistakes in calculating the lengths and occasions of absence and wrongly trigger a formal review.

Should any of the absences be excluded from the absence calculation?

Absence policies should discount some absences from any absence calculations. For example, pregnancy-related sickness should be discounted or the employer could face the charge of sex discrimination if the company disciplines pregnant women for higher than average absence levels.

Most companies have a list of absences that should be discounted. It is always worthwhile going through the absences with the member to check whether any absences should be discounted. This can make the difference between disciplinary action and no action.

Has the correct procedure been followed?

Many companies have a detailed sickness absence procedure. Has the manager followed the procedure? If they have not, the employer's position to take action against the employee could be fundamentally weakened.

Are there any special circumstances surrounding the member's absences?

No employee should be automatically disciplined because their levels of absence trigger a review. The manager should listen to and take into consideration any special circumstances surrounding absences.

Every employee has their own story to tell. Each individual has an explanation for their absences. It is important to get the manager to listen to each individual special case. No case should be pre-judged. The employer has to listen and consider each case separately.

Should the Union be protecting some people who are taking 'sickies'?

It is very easy to jump to conclusions about certain individuals without knowing the full story. Managers do this all the time!

Regular absence from work is often linked to other problems, eg problems at work, childcare or transport difficulties, underlying serious medical condition, etc. The Usdaw rep can play an important role in getting to the bottom of an employee's poor attendance record. A member will often tell the full story to a rep before they will explain it to a manager.

Absence reviews will only lead to the right decision if all the factors are taken into consideration. The Usdaw rep plays a key role in ensuring members get their opportunity to put over their side of the story. A fair hearing depends on effective representation.

Supporting members on long-term sick

Representing and supporting an employee who is on long-term sick absence is a different challenge.

ACAS advises employers that one of the key measures for dealing with long-term absence is to develop a 'getting back to work' programme. Long-term sickness raises a different set of issues. When will a return to work be possible? Would a phased return help the employee back to work? Could some redesign of the job speed up a return to work? Is there a requirement under the Disability Discrimination Act 1995 to make a reasonable adjustment?

Summary

Ushaw reps play an important role in protecting the interests of members who are subject to absence management. Employers need to recognise that reps have a right to play an active role in advising and representing members. The manager's case needs to be scrutinised and, if necessary, challenged, and the Usdaw rep plays a key role in this process.



Section 7: Disability Discrimination and Absence Management

The Disability Discrimination Act (DDA) has very important implications for sickness absence policies but this legislation is often misunderstood. This section aims to clarify how the DDA impacts on absence management.

Disability Discrimination Act

The Act protects disabled people from discrimination. It places certain duties on employers including the duty to make 'reasonable adjustments'.

How does this affect absence management policies?

The Disability Discrimination Act can:

- Prevent members from being disciplined or dismissed under absence policies.
- Help members who are off sick get back to work.
- Stop members from having to go off sick in the first place.

Just because someone is covered by the DDA does not mean they cannot be disciplined under an absence policy. What it does mean is that employers must make reasonable adjustments to take account of that person's disability.

Disciplinary action should only be considered after all adjustments have been exhausted.

What is a 'reasonable adjustment'?

If an employee falls within the DDA definition of a disability then the employer needs to consider whether their working arrangements or any physical feature of the workplace puts them at a substantial disadvantage.

Appropriate adjustments could include:

- Reducing and/or being flexible about working hours.
- Working alongside a colleague.
- Adjustments to the work environment (for example equipment, facilities, routine).
- Refresher or further training.
- Removal of certain elements of the job.
- Increasing the individual's 'trigger' level in absence policies.
- Allowing a person time off for rehabilitation, assessment or treatment.

It is important not to make assumptions about what a 'reasonable adjustment' could be. There are no hard and fast rules – what might be right for one disabled worker may be of no help to another. The key to negotiating appropriate adjustments is to discuss, plan and agree these with the disabled person.

Adjustments need to be relevant and effective. In other words, will the adjustment actually make it possible for the disabled worker to do their job or help them to return to work? It is important that adjustments help the individual and are not merely a 'tick box' exercise.

Who is covered?

For a person to be protected by the DDA they need to be covered by the legal definition of a disability. To be disabled a person must have:

- A physical or mental impairment.
- The impairment has an adverse effect on their ability to carry out day-to-day activities.
- The effect is substantial.
- The effect is long-term (has lasted or will last for 12 months or more).

There is no 'list' of conditions that are automatically covered by the DDA. Each case has to be assessed on its merits and must meet the previously mentioned criteria. The only illnesses that are automatically covered by the DDA from diagnosis are cancer, multiple sclerosis and HIV.

What is normal day-to-day activity?

In terms of the DDA this means that at least one of the following areas has to be badly affected when medication is not taken:

- Mobility.
- Manual dexterity.
- Physical co-ordination.
- Contenance.
- Ability to lift, carry or move everyday items.
- Speech, hearing or eyesight.
- Memory or ability to concentrate, learn or understand.
- Understanding the risk of physical danger.

What conditions may be covered by the DDA?

Although there is no 'list' of conditions automatically covered by the DDA, the following may fall within the scope of the legislation:

- Depression.
- Epilepsy.
- Diabetes.
- Respiratory conditions including asthma.
- Cardiovascular conditions including angina.
- Learning difficulties.
- Arthritis.
- Mobility difficulties.
- Back problems.

Each case needs to be considered individually. It is important to focus not on the illness but on the legal definition of a disability.

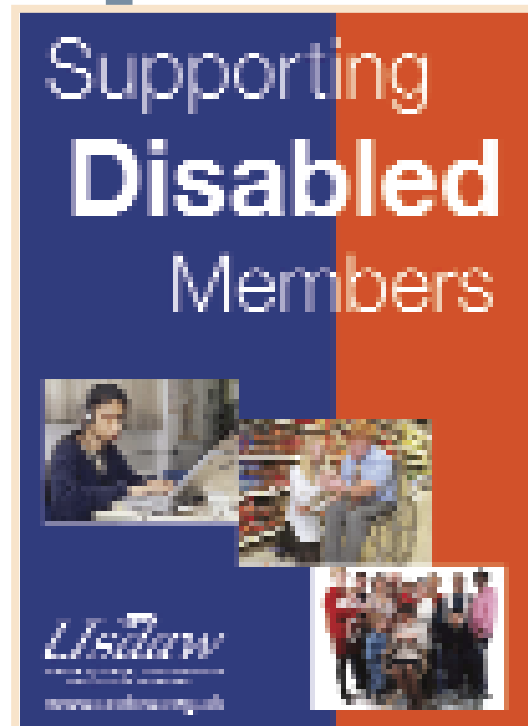
Summary

The DDA places additional responsibilities on employers that can help some members under absence management scrutiny. To be covered, members must meet the legal definition of a disability – there is no set list of conditions that are covered.

If they are covered then the employer has a duty to make appropriate reasonable adjustments. However, this does not mean that an employer would never be able to discipline somebody who is covered by the DDA.

It is important that assumptions are not made about a person's disability – the best person to ask is the individual themselves.

For more information about the DDA and how best to support disabled members see Usdaw's *Supporting Disabled Members* Leaflet and the Disability at Work EC Statement agreed by the 2008 ADM.



Conclusion

Employers see tackling sickness absence as a key priority as days lost through illness represent a cost to business and lost profits. Many employers believe there is a 'sickie' culture in workplaces with staff having time off when they are really well enough to go to work. Employers have identified absence management as a business priority.

A closer look at the real facts surrounding employee absence shows there is no sick note culture in UK workplaces. The expansion and intensification of absence policies in workplaces has had little impact on absence levels, suggesting that the vast majority of absences are genuine. Workers in the UK are less likely to take time off sick than workers in nearly every other European country, disproving the myth that British workplaces suffer from a culture of absenteeism.

Many employers are determined to have policies that will tackle absence levels. The most common absence management tools adopted by employers include: return to work interviews, absence levels triggering absence reviews, restricting sick pay and disciplinary procedures for unacceptable levels of attendance.

A closer look at case studies of a few of the big retail companies shows that many employers use the same tools to manage absence. The real contrast is with non-union companies who often have much more stringent sickness absence management.

Absence management is here to stay and the trade union response is to work for fair absence policies that ensure that those workers who are ill are not victimised, will get a full and fair hearing and will receive support as well as scrutiny from their employer.

Usdaw reps play a key role in ensuring that members get a fair hearing over absence management. Reps are double-checking managers' absence calculations, pushing for discretion to be exercised in individual cases and challenging harsh management decisions.

Usdaw reps are also playing an important role in making the case for reasonable adjustments to be made for employees covered by the Disability Discrimination Act.

In summary, the Union is committed to working at a company level for fair absence policies and representing at the level of the workplace to ensure members get a fair hearing. Usdaw officials and local reps working together are delivering a coherent joined-up trade union response to sickness absence management.



Improving workers' lives – Winning for members

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