

BASIC SICKNESS MANAGEMENT PROCEDURES

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The templates provided in appendices 1 to 4 are training tools only and are intended to provide guidance and to help Councils to develop their own documents. While every care has been taken to compiling these notes, Personnel Advice and Solutions Ltd cannot be held responsible for any errors or omissions. These notes are intended to provide general information. Guidance for specific legal problems should be sought separately.

Step One – Who does it?

The Full Council is responsible for all management activity, and so responsibility lies with the body for managing staff sickness and attendance. However, that responsibility may be delegated by formal resolution to a Committee/Sub Committee/Panel.

If responsibility has been delegated to another body, the terms of reference for that body need to be clear in terms of what they can do, who can have access to sensitive personal information, who decides the outcome and the size of budget available.

For example:

To investigate any health and/or attendance issue concerning Employees of the Council the Committee has a budget to arrange for medical assessments to be conducted and reports produced either by an independent Occupational Health Doctor, or an Employees own Doctor, to enable the investigation to be conducted.

The Committee will be responsible for the full implementation of the Councils capability procedure relating to Employee health and attendance and work. This includes the ability to recommend and implement reasonable adjustments to accommodate an Employees needs. The Committee will have a budget to pay for any necessary adjustments.

Step Two – Investigate attendance

Objectively assess and measure the Employees levels of attendance.

Most Councils rely on a count of the number of days absent from work. Using this list the Council's management may decide to take action once a specific number of days sick leave have been accrued.

Elected Members and Employees must be aware that such data falls under Part 4 of the Data Protection Act, and must be confidential. Any references to staff attendance and sickness made to any third party will potentially breach GDPR legislation.

Larger Councils may find using the Bradford Factor as a useful tool to measure the disruption caused by absenteeism. The real problem with absence is the amount of disruption caused by short notice absences, particularly those Employees who are unreliable and let the Council's management down at the last minute.

The Bradford Factor calculates both the number of days off and the number of sickness incidents as follows.

No of days absent during the 12 months period x **(No of sickness absence episodes)²** = **Individual Index**

Example No 1 – Occasional days off

An employee has 9 episodes of sickness, each of one day only in duration.

Their index would be calculated as follows:

$$9 \times (9)^2 = 729$$

Example No 2 – An Employee who has an ongoing health issue

An Employee has one episode of sickness, total of forty days.

Their index would be calculated as follows:

$$40 \times (1)^2 = 40$$

As demonstrated above, although the Employee in examples 1 has less than a quarter of the time off compared to number 2, their Bradford Factor is nearly 20 times higher.

This enables the Council to target their attention on the Employees who cause the most disruption.

Step Three – Talk to the Employee

Conduct an informal investigatory meeting with those Employees whose non-attendance figures are high.

Informal Meeting Agenda

1. What difficulties the Employee is suffering – if any?
2. What alteration to their job/adaptations to their working environment/alternative work can help the individual to overcome the problem?
3. How can the Employee and Managers work together to assist the individual overcome their sickness problem?

Step Four – Getting Medical Advice

If the Employee informs the Council that they have a chronic/ongoing health issue, or there is reason to believe that they may have such a problem, the Council needs to conduct a “proper” investigation.

This entails getting professional third party medical advice from either the Employee’s Doctor or the Council’s Occupational Health Specialist.

Questions to the Doctor.

- Does this person have a long term health problem?
- Does it affect their ability to do their job?
- What reasonable support and adjustments can the Council provides to help accommodate them at work?
- What is the long term prognosis?

Step Five – If the Employee informs the Council that they have no health problems, just coughs and colds.

Reasons for Formal Discipline:

If an Employee's absenteeism is unacceptable compared to other staff, and they don't have any health problems, they could face formal disciplinary action for unacceptable attendance at work.

Conduct an informal meeting with the Employee to find out the reasons for their time off, and explain the problem caused by their alleged unacceptable absence from work.

Give the Employee a chance to explain their side of the problem.

If they cannot provide a reasonable explanation, inform the Employee that a Formal Disciplinary Hearing is to be conducted to address their unauthorised absence.

OR

Disciplinary action will be pursued if attendance fails to improve.

Ultimately this could result in dismissal if attendance fails to improve despite Formal and Final Written Warnings.

Step Six – The Employee informs the Council that they have a health problem

If the Employee informs the informal investigatory meeting that they have a genuine health problem, and this is confirmed in the Doctor's medical report, they may fall into the definition of disabled, i.e. any long term mental or physical health problem that affects an Employees day to day activities (S6 Equality Act 2010).

The Council needs to conduct an informal review meeting to go through the Doctor's recommendations, and find out what can be done by the Council to make reasonable adjustments to accommodate the Employee.

Reasonable adjustments include:

1. Amending the Job Description to remove activities, which the Doctor believes are not compatible with the Employees health.
2. Find alternative work which the Employees health is more suited to doing.
3. Adjust the work environment to improve accessibility, such as ramps for wheelchairs or software to make VDU's more readable to those with sight problems

Consider the use of Access to Work – see Step 7 below.

If “reasonable” adjustments involve amending terms and conditions, such as “Reduced hours” or move to a lower position.

- Comply with Doctors recommended changes as soon as possible.
- Provide statutory notice period before changing pay etc., i.e. one week's pay for each year of continuous employment, or contractual notice, whichever is the higher.

Step Seven - The Councils legal obligation to make adjustments to accommodate the Employees disabilities

Town and Parish Councils have limited resources, and may lack the ability of larger Councils to accommodate a disabled Employee. However, every effort must be made to try and facilitate what the medical report recommended.

Even if Councillors believe that it may be difficult to do so, a trial period of implementing the medical advice can provide hard evidence of the Council's willingness to go the extra mile to accommodate someone, rather than just dismissing the Doctor's recommendations.

Going the “extra mile” for a disabled Employee is effectively a legal requirement.

Regardless of how other staff are treated who do not have a disability, Councils, along with other Employers, have to make an extra effort with disabled staff, to accommodate their needs.

One way of doing this is to involve Access to Work. This is a Government initiative that provides support and equipment to help people with disabilities to stay in work, and for Councils to make the necessary adjustments to accommodate them. However, only the Employee can contact them, and can do so on 0800 121 7479 or www.gov.uk/access-to-work/apply.

Councils must take all recommendations by either Doctors, or other agencies, such as Access to Work, seriously, and have evidence that they have taken all reasonable steps to accommodate the Employee.

Failure to do so can be expensive if it results in a successful claim for Disability Discrimination at the Employment Tribunal. A schedule of loss can typically include:

1. Full pay from the date the discrimination occurred up to the date of the Tribunal, which may be more than one year.
2. Injury to Feelings, currently capped at £49,600.
3. Loss of pension rights, which can be very expensive if the Councils uses the Local Government Pension Scheme.

Step Eight – Capability

If advice from the Doctor's report is that the Employee is unfit for work, now and in the foreseeable future, or that there are no adjustments that can be made to accommodate them within the Council, dismissal on Capability grounds can be considered.

This would entail;

1. Conducting the informal medical review meeting, as detailed in Step 6 above.
2. Asking the Employee if they agree with the Doctor's opinion.
3. Discussing all possibilities that could be used to accommodate the Employee, such as a change of job, support from Access to Work, using a different work place/homeworking. If all parties accept that these options are not viable, conduct a Formal Capability Hearing.
4. The Employee would receive a written invitation to a Formal Capability Hearing. The letter would inform them of the reason for the hearing, what steps the Council has already taken to try and accommodate them, inform the Employee of their right to be accompanied by a colleague or Union Representative, and let them know that one potential outcome could be dismissal.
5. Conduct the Hearing, the purpose of which is again to explore all options that the Council could use to accommodate the Employee and decide if any of those options are available.
6. If the decision is that there are no workable options to overcome the disability and accommodate the Employee, their employment could be terminated. They will be informed of this in a formal letter, sent after the Hearing, which would include all details of why this decision has been taken, and the Employee's right of appeal.
7. Severance pay would include contractual/statutory notice pay, plus payment for unused leave accrued during the current holiday year.

Please note; we recommend that any Council considering dismissal for health related capability issues needs to get professional legal advice before acting, to make sure that the needs and legal entitlements of the Employee are fully addressed, and the Council doesn't fall foul of expensive claims at the Employment Tribunal.

If the Employee is a member of the Local Government Pension Scheme they may also qualify for retirement on ill health support.

Managing Absenteeism and Sickness

Managing sickness problems and Employee absenteeism are some of the biggest employment problems faced by small Councils. Paying sick pay can be a major drain on the Personnel budget. However if a Council mismanages the problem they could face very expensive Employment Tribunal claims for Disability Discrimination.

The following guidelines are intended to give some insight into what steps should be considered when addressing this problem.

Overall Strategy

Advice from organisations such as ACAS and the DWP is:

- 1 Objectively assess and measure Employees' levels of attendance.
- 2 Conduct a reasonable investigation into those Employees whose absenteeism stands out, usually as above the average for the workforce.
- 3 Have a formal procedure to address the problem.

Objectively assess and measure employees' levels of attendance.

For most Councils a simple count of the number of days each Employee has taken off over a twelve month period would provide adequate data, and anyone whose absenteeism is particularly high would justify further investigation.

There are more sophisticated methods of assessment which could help the Council's management to identify which workers are causing most disruption without necessarily having a serious health problem. However Councils who employ up to 20 workers, and who know individual Employees personally, would find that a simple count of the number of days off per annum would provide adequate information.

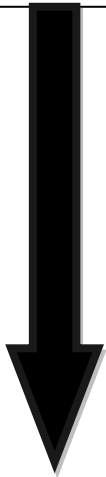


Investigate those Employees whose absenteeism stands out.

Employees whose sickness exceeds the Council's average would attend a Return to Work interview, after the period of absence which took them over the average for the workforce.

The purpose of this interview is to discuss:

- 1 What difficulties the Employee is suffering. Do they have a health problem? Are personal circumstances the cause of the problem? Alternatively is it simply a conduct issue?
- 2 If the Employee informs the Council that they do have a genuine physical or mental health problem affecting their ability to work, and the problem has the potential to last for twelve or more months, the Council should seek professional medical, and ask the Employee for their consent to request a medical report.



If the Employee doesn't have any health problems - but their absenteeism figures don't improve, the Council can take formal disciplinary action based on the Employee's unacceptable attendance.



If the Employee says they do have a health problem – Ask for their consent to get a Doctor's report. A report can come from the Employee's own GP, or a Doctor / Occupational Health Specialist selected by the Council. The purpose of this report would be to answer questions such as:

- What is the diagnosis and is the problem likely to last for a period of twelve or more months?
- Does it affect their ability to do their job? (Include a copy of their Job Description)
- What reasonable support and assistance can the Council provide to help them attend work?
- What is the long term prognosis with regards their ability to do their job?

The cost of such a report is usually around £150 to £400, which may be extremely cost effective in the long term.



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If the doctor confirms that the Employee does have a genuine health problem - the Council needs to use the medical report to investigate how it can make reasonable adjustments to help accommodate the Employee at work.

This would typically involve conducting a follow up meeting with the Employee after receiving the Doctor's report. The purpose of this meeting would be to investigate the following options:

- Alternative work which the Employee is able to do.
- Adapting the Employee's job to remove areas which are not compatible with their health.
- Adjusting the Employee's working environment to help them attend work.

If the adjustments involve reducing hours of work, position within the Council or some other action which would justify reducing the Employee's terms and conditions of employment, the medical advice must be followed as soon as possible.

The Employee's terms and conditions such as pay, would be adjusted to match the new post following a notice period of one week for every year of employment with the Council, or their contractual notice period, whichever is longer.



If the Council can prove after it has conducted a detailed and meaningful investigation following the Doctor's / Occupational Health Specialists advice, that:

- There are no adjustments that can be made to accommodate the Employee
- The costs and / or disruption required to accommodate the Employee are genuinely unreasonable, and not realistically possible for the Council to comply with.

The Council can consider terminating the Employee's contract on capability grounds. The Employee would be invited to a Formal Capability Hearing, at which this option would be discussed and considered. The Employee could be accompanied by a Colleague or Trade Union Representative.

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APPENDIX 1

Consent for details of Medical reports to be provided to my Employer

Name of Employer: **COUNCIL NAME**

Full name of Employee:

Full address of Employee:

I agree that a medical opinion about my capacity for work may be obtained by my Employer from my GP / Consultant, or an Independent Occupational Health Consultant.

I agree that the Doctor may give relevant medical information to my Employer which may involve medically examining me and sending a report in confidence to my Employer, and that I shall be given access to that report before it is sent to my Employer for the purpose of correcting any misleading or inaccurate information.

AGREE

DISAGREE

Employee's signature:

Date:

Please provide:

Name of Doctor

Surgery / Hospital Address

.....

APPENDIX 2

DATE

Dr NAME
SURGERY ADDRESS

Dear Dr NAME

Re: NAME
EMPLOYEE ADDRESS
EMPLOYEE DATE OF BIRTH

NAME is employed by COUNCIL NAME as a position and has recently been signed off work / reported that they are suffering from DIAGNOSIS.

As their Employer we are keen to investigate this problem to help support NAME, and also make reasonable adjustments to help accommodate them at work. To do this we would like to ask for your support in providing a report to address the points listed below.

I have discussed this with NAME, who has provided her consent for me to write to you and ask for a report. A copy of her consent form is enclosed.

In particular, we would like your report to address the following:

1. Can you please confirm any diagnoses they have received?
2. Do they have any previous history of mental health problems?
3. Are any of their health problems likely to affect their capability at work for a period of twelve months or more?
4. Can you please state if any elements of their job are causing the problem?
5. Are there any adjustments you would recommend to assist NAME?
6. When can we realistically expect them to be able to return to work?

Please send all correspondence to myself. Your response will need to be constructed under the terms of the Access to Medical Reports Act.

Please feel free to contact me if you have any questions.

Yours sincerely

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Enc Consent Form

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APPENDIX 3

DATE

NAME

ADDRESS

Dear **NAME**

I am writing to invite you to an informal medical review meeting on **DATE** at **TIME**, to be conducted at our offices.

The purpose of this meeting is to discuss the Occupational Health report we received following your assessment with Dr **NAME** on the **DATE**. I understand you already have a copy of the Doctor's report, however I have enclosed another with this letter for your information.

It is our intention to go through that report with you, to discuss how the Council can implement the Doctor's recommendations. The meeting will be conducted by myself, and it is our intention to go through what the Council can do to support you in your return to work, and accommodate you once you are back, based on this medical advice.

Please note that this is an informal meeting, and no formal action will be taken during this meeting, however we may wish to invite you to further meetings.

If you have any questions you would like to ask me before the meeting, please do not hesitate to contact me.

Yours sincerely

CC File

APPENDIX 4

DATE

NAME

ADDRESS

Dear NAME

I am writing to invite you to a Formal Capability Hearing on DATE to be conducted at our offices at TIME.

The purpose of this Hearing is to determine whether or not you are able to return to work at any point in the foreseeable future. As you are aware, the Council has been investigating your current health issues to find out how we would be able to accommodate you at work.

That investigation has involved arranging an Occupational Health assessment. The Doctor's report stated PROVIDE DETAILS.

As you are aware, an informal medical review meeting was conducted with you on the DATE, to go through the Doctor's report. You informed me that you agreed with their contents, and that you are unable to do your job for the foreseeable future. You also stated that you were not able to do other work, regardless of whether or not appropriate training was provided.

A copy of the medical report, as well as the transcript from our informal meeting on the DATE are enclosed with this letter for your information.

Consequently, the Council now needs to conclude its investigation. To do that it has arranged this Capability Hearing, the purpose of which is to find out if there are any adjustments we could make to accommodate you at work, or if we need to terminate your employment on capability grounds.

As this will be Formal Hearing, you are entitled to be accompanied by either a colleague or Trade Union Representative. If you wish to rearrange this Hearing to enable you to be accompanied, can you please let me know as a matter of priority?

Please be aware that one possible outcome of the Capability Hearing could be your dismissal on capability grounds if we are unable to make reasonable adjustments to accommodate you.

Yours sincerely

cc: File