

Do I have to accept the GP's certificate?

We have had many discussions with client companies over the last few weeks on the subject of the validity of the GP certificate, whether it has to be accepted, whether an employee can return to work before the certificate has run its course and the status of an occupational health physician's report if it disagrees with the statement on the GP certificate (Med3). It is evidently an important issue for many client organisations, particularly if they attempt to manage sickness absence, improve attendance and particularly target employees who take multiple short term absences.

We addressed this subject approximately 18 months ago, but felt it was important in the light of increasing concerns from our clients, and also in the light of certain developments or non developments during 2005, to revisit this important subject.

As you are no doubt aware, there are over 30 reasons why an individual may be absent from work, only one of these reasons is medical. The current system in the United Kingdom of General Practitioner sick note certification allows employees to medicalise non medical issues and also to justify absence from a medical perspective when this may not necessarily be the case. It is important to understand that the General Practitioner is the patient's advocate. There is a significant body of research which indicates that General Practitioner's never challenge patients. They will always write a sick note if they are asked to and they do not consider it is their role or that they have the appropriate skills to make an objective assessment with regards to an individual's fitness to be at work.

Changes were floated by the current UK government in 2004 to potentially come into operation in 2005. As is very often the case, nothing has happened and the current situation remains the same as it has done, essentially since the creation of the National Health Service in 1948.

It is important therefore to clarify the status of the certificate that they employee obtains from the General Practitioner after they have been absent from work due to ill health for in excess of five working days. The normal certificate obtained is an FMed3. Also available from the General Practitioner is a pink certificate FMed5 which allows the General Practitioner to sign an employee off work retrospectively. It is important to note that at the top of an FMed3 or FMed5 in red letters is the phrase "for Social Services and Statutory Sick Pay Purposes Only".

The FMed3 Certificate is signed by the General Practitioner. It contains documentary information from the General Practitioner to his/her patient. The information is not for the benefit of the employer.

The employer is not bound to accept the information on a General Practitioner's certificate if he can demonstrate that he has based any decision that he makes on informed advice that is of at least equivalent competence. The advice of an occupational health physician satisfies this criteria and in fact supercedes the General Practitioner's certificate as will be explained later.

The FMed3 or FMed 5 is issued as the statutory requirement for the purposes of access to state benefits. Its primary purpose is not for assisting employees in managing their attendance issues.

The Department responsible for the legislation accompanying statutory certification in the United Kingdom is not the National Health Service, it is the Department of Work and Pensions.

The signing of statutory certificates, such FMed3 and FMed5, is a duty undertaken by UK General Practitioners as part of their contract with the UK Government. UK General Practitioners receive remuneration from the UK Government for this service.

At a recent Department of Work and Pensions conference, the following concept which may be familiar to some organisations was discussed and I believe is useful. When an employee takes up a post with an employer, they enter a 'contract' of employment. If for any reason they do not attend work, this 'contract' is broken. The employer, therefore, can determine how they wish to manage the situation, the employee having broken the 'contract'. The employee, if they are absent for health reasons, may submit an FMed3 or FMed5. It is the employer's right to accept or reject this certificate. If they wish to reject the certificate, or take alternate advice they are able to do so. Current case law supports this position, and goes further indicating that the report of a qualified occupational physician supercedes that of a General Practitioner. The reasons given are that a competent General Practitioner and a competent Occupational Health Physician may have the same medical skills, but that a competent Occupational Health Physician has additional skills and also is fully aware of the hazards and risks of the workplace.

Current UK Case Law therefore supports the employer in challenging the issuing of medical certificates by General Practitioners and, where the employer has taken appropriate competent advice, taking management action based on this alternative



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advice even if it is in direct contradiction to the information provided by the FMed3 or FMed 5 certificate.

We hope this information is useful to you in attempting to manage your attendance issues within the workplace. If you have any specific questions or cases, please do not hesitate to contact Jane Puncher on: 01622 775285 or email: <mailto:j.puncher@phcohealth.co.uk> or for more general information with regards to any of Preventative Healthcare's services email us at: <mailto:talktous@phcohealth.co.uk>. Or visit our website at: www.phcohealth.com

