

Government consultation – reforms to absence management, reporting and SSP

UCEA Consultation Response

UCEA

This is the response from the Universities and Colleges Employers Association (UCEA) to the government consultation – “Health is everyone’s business - Proposals to reduce ill health-related job loss”. The response is based on views provided by 35 of our member higher education (HE) employers.

UCEA represents the views of higher education institutions (HEIs) across the UK in their capacity as employers. UCEA is a membership body funded by subscriptions from 163 HEIs in the UK, in addition to eight sector associate members. Our purpose is to support our member HE employers in delivering excellent and world-leading higher education and research by representing their interests as employers and facilitating their work in delivering effective employment and workforce strategies.

HEIs are independent employers and determine their own employment policies, often in consultation with recognised trade unions; therefore, there is a variety of HR practices in place in the sector.

Introduction

HEIs broadly welcome the proposals set out in the consultation paper ‘Health is everyone’s business’. The Higher Education (HE) sector is committed to enabling employees who are genuinely ill to return to work as soon as possible. However, HE employers already have established sickness absence procedures and many of these include processes to facilitate a timely return to work, such as extending ‘reasonable adjustments’ to employees who have health conditions which may not fall within the scope of disability legislation. We are therefore keen to ensure that any reforms introduced allow sufficient flexibility and discretion on the part of the employer to complement these existing procedures. Significant investment from the Government will also be required, not only to boost Occupational Health (OH) services, but also to develop the role of GPs, other NHS services, and related government services such as Access to Work. We also believe that improvements in absence management cannot be achieved by introducing a new set of statutory procedures and guidance alone. The implementation of any new legislation should be seen as part of a more comprehensive and proactive approach to sickness absence which includes encouraging healthy working environments, developing an engaged and resilient workforce, and promoting a culture which will encourage employees to want to return to work.

Right to request workplace modifications

1. Do you agree that a new ‘right to request work(place) modifications’ on health grounds could be an effective way to help employees to receive adjustments to help them stay in work?

Yes / ~~No~~ / ~~Don’t know (with reasons)~~

However, we are aware that many Higher Education Institutions (HEIs) already have similar practices and procedures in place that are working well.

It is not clear how this right will interact with the employer's duties to make reasonable adjustments for employees with disabilities, or existing legislation regarding unfair dismissal.

One of our members has expressed concern that, if introduced, this new legislation may have an adverse impact on employees with disabilities as limited resources available for workplace adjustments will be spread more thinly.

2. If the government were to implement a new right to request work(place) modifications, who should be eligible?

- Any employee returning to work after a period of long-term sickness absence of 4 or more weeks
- ~~Any employee with a cumulative total of 4+ weeks sickness absence in a 12-month period~~
- ~~Any employee returning to work after any period of sickness absence~~
- Any employee who is able to demonstrate a need for a work(place) modification on health grounds
- ~~Other, please state.~~

Of our members who have commented, the majority felt the right should apply to an employee who is able to demonstrate the need for a workplace modification on health grounds; however, some of these also feel that the employee should be absent for 4 or more weeks. In addition, the employee should be able to provide evidence to support their stated need and request.

3. How long do you think an employer would need to consider and respond formally to a statutory request for a work(place) modification?

- 0-4 weeks
- 5-8 weeks; or
- ~~9-12 weeks?~~

Of our members who have commented, the majority felt that 0-4 weeks would be needed to provide the initial response (i.e. this time period would not include putting the modifications in place) as early intervention would be beneficial in facilitating a return to work, and 5-8 weeks to respond fully. However, the timescales would depend very much on whether OH advice is required and the turnaround time for this, and other factors such as whether specialist equipment needs to be procured.

4. Do you think that it is reasonable to expect all employers:

- To consider requests made under a new 'right to request' work(place) modifications?

Yes /no /if no –why?

- To provide a written response setting out their decision to the employee?

Yes /no /if no –why?

Requests should be considered and a written response provided in the case of large employers – this would support good employment practice. However, we are conscious that this would place an additional burden on small employers. The legislation should be accompanied by sufficient guidance, including guidance on any right to challenge the outcome of the request. Further guidance is needed on how the right would sit alongside the duty to consider reasonable adjustments under the Equality Act 2010 in the case of employees with disabilities, and unfair dismissal legislation.

5. Please identify what you would consider to be legitimate business reasons for an employer to refuse a new right to request for a work(place) modification made on health grounds:

- The extent of an employer's financial or other resources
- The extent of physical change required to be made by an employer to their business premises in order to accommodate a request
- The extent to which it would impact on productivity
- Other – please state

Please give further views in support of your response.

All of the above are legitimate business reasons to refuse a request. Other reasons include:

- The adverse impact on other staff e.g. in terms of workload, hours, pattern of work, flexible working requests from other staff.
- The adverse impact on stakeholders/customers/the service provided.
- Forthcoming organisational changes.
- Insufficiency of the evidence provided by the employee to support their request.
- The period of time for which the modification is requested i.e. the modification is to be generally considered as a means of facilitating a return to work and therefore should be time limited in most cases.
- The time period required to implement the modification and whether this is reasonable in the light of the period of time for which the modification is requested.

The 'reasonableness' of the request should be considered in all cases.

The government should provide guidance on the legitimate business reasons to refuse a request (with examples) rather than prescribing the reasons.

Encouraging early and supportive action from employers during sickness absence

6. Do you agree that there is a case for strengthened statutory guidance that prompts employers to demonstrate that they have taken early, sustained and proportionate action to support employees return to work?

Yes /No /Maybe /Don't know

However, the following points should be taken into account:

- The guidance should not place an unreasonable administrative burden on employers.
- It is important to clarify how 'early, sustained and proportionate action' is defined.
- Any processes or procedures set out in the guidance need to be sufficiently flexible so that they can be applied to a wide variety of cases and allow the employer's discretion to be applied.
- The guidance should not reduce the employer's ability to dismiss fairly on the grounds of capability, for example by clarifying that there may be limits to the level of support that employers can provide; and that capability dismissals are still possible.

7.If yes, would principle-based guidance provide employers with sufficient clarity on their obligations, or should guidance set out more specific actions for employers to take?

- **Principle-based guidance provides employers with sufficient clarity.**
- ~~Guidance should set out more specific actions for employers to take.~~
- ~~Don't know.~~
- ~~Other – please state.~~

The guidance should be principle-based, reasonable and not excessively prescriptive. Clear examples and useful checklists should be included. It should be flexible enough to be applied to a variety of cases and circumstances.

8. What would be the most effective ways in which an employer could demonstrate that they had taken – or sought to take – early, sustained and proportionate action to help an employee return to work? - For example, a note of a conversation, or a formal write-up.

The employer should keep a formal record of all contact that has been made with the employee including notes of meetings held, notes of conversations, records of any communications regarding OH referrals, records of any communications relating to GP advice, and any documents relating to internal procedures for managing sickness absence.

Guidance should be given on what would be considered satisfactory evidence, rather than specifying the requirements in detail.

9. What support would you need to meet a legal requirement to provide early, sustained and proportionate support to help an employee to stay in work or return to work from a long-term sickness absence?

- **Better quality employer information and guidance.**
- **More easily accessible employer information and guidance.**
- **Easier access to quality OH services.**
- **Other – please state.**

All of the above support would be welcome. In addition to the forms of support suggested, HE employers would like to see:

- Improved access to informative and responsive NHS services which can demonstrate a balanced view of the needs of the employee and the employer.
- Access to OH services where the needs of your particular business are clearly understood.
- Easier access to quality advice on reasonable adjustments in the workplace.
- An overhaul of the role of GPs to include improved information on phased returns.

10. In order for employers to provide effective return to work support, what action is needed by employees? Select all that apply.

- **To have discussions with their employer to identify barriers preventing a return to work and to inform workplace support.**
- **To agree a plan with their employer to guide the return to work process.**
- **To engage with OH services.**
- **Other – please state.**

All of the above forms of actions by employees are necessary. In addition to these, the following are necessary:

- Employees must engage fully in keeping in touch with their employer throughout their illness.
- Employees must engage fully with their GPs and other healthcare professionals in identifying suitable medical treatment.
- Employees must engage fully with support from external agencies such as Access to Work, where relevant.
- Employees should engage with their employer regarding granting access to medical information which may facilitate the process; the guidance should include expectations of the employer if the employee fails to provide their consent to share the relevant medical information.

The guidance should specify the obligations of employees clearly, stating that employees have an obligation to engage in the process at an early stage, and whenever required by the employer (subject to any reasonable limitations caused by their illness).

Pro-rata SSP during phased returns to work

11. What support would make it easier to provide phased returns to work during a period of sickness absence?

- **Guidance on how to implement a good phased return to work.**
- ~~A legal framework for a phased return to work which includes rules on how it should be agreed and implemented.~~
- **Clearer medical or professional information on whether a phased return to work is appropriate**
- ~~Other suggestions.~~

HEIs do not wish to see the introduction of a legal framework for phased returns to work. HE employers already have established procedures in place to implement phased returns to work when appropriate, and these enable the employer to use their judgement and discretion, taking into account any medical/OH advice received. However, additional

guidance would be welcome. Guidance on enabling employers to adopt a consistent approach to phased returns within the organisation, for example, would be helpful.

Clearer medical or professional advice regarding phased returns to work, which is often lacking, would be particularly useful. Some of our members have expressed a concern about the length of time required to obtain medical/OH advice – this can substantially delay the process of implementing a phased return to work. Further guidance on dealing with this issue would be welcome. The process of implementing a phased return would also be facilitated by more timely access to NHS services such as physiotherapy and mental health support by the employee. Providing guidance and training to GPs is also necessary.

Concerns have been expressed by some of our members regarding any increase to the complexity of SSP rules. It should be noted that the proposed changes will require significant modification of payroll systems, at a cost to the employer, and employers should be allowed sufficient implementation time for such changes.

Simplifying SSP rules

12. Would the removal of rules requiring identification of specific qualifying days help simplify SSP eligibility?

Yes / ~~No~~ / ~~Maybe~~ / ~~Don't know~~

Please give reasons for your answer.

Any simplification of the currently complex SSP rules would be welcome, particularly where agile working practices mean that many staff do not have regular working patterns. Such a change may make eligibility clearer to employees.

Widening eligibility for SSP

13. Do you agree that SSP should be extended to include employees earning below the lower earnings limit (LEL)?

Yes / ~~No~~ / ~~Maybe~~ / ~~Don't know~~

Please give reasons for your response.

Of our members who commented, the majority believe this would be a fairer and more equitable system, and would have a positive impact on the modern workforce (where multiple forms of contracts exist including part-time workers, apprentices and those who have multiple low-income roles). However, as most HE employers have more generous Occupational Sick Pay schemes, this change is unlikely to have a significant impact on them. Any additional costs on smaller employers in other sectors should be taken into account.

14. For employees earning less than the LEL, would payment of SSP at 80% of earnings strike the right balance between support for employees and avoiding the risk of creating a disincentive to return to work?

Yes / ~~No~~ / ~~Maybe~~ / ~~Don't know~~

Please give reasons for your response.

The majority of our members who have commented felt that this would be an appropriate balance. However, the impact of complex calculations on internal processes and resources should be considered. Furthermore, the premise for suggesting the particular figure of 80% is not clear.

15. Do you agree that rights to SSP should be accrued over time?

~~Yes~~ / ~~No~~ / **Maybe** / ~~Don't know~~

Please give reasons for your response.

We do not feel that there is compelling evidence to support implementing this change. Although this would reward loyalty and reduce costs to the employer, a number of drawbacks have been identified by our members including:

- It would be complex to administer and for employees to understand.
- It would disadvantage casuals and zero hour workers.
- It would create an additional administrative workload.
- It would be unsupportive to genuinely ill employees.

Early notification of the end of SSP

16. Do you support the SSP1 form being given to employees four weeks before the end of SSP to help inform them of their options?

Yes / ~~No~~ / ~~Maybe~~ / ~~Don't know~~

Please give reasons for your response.

This change would be beneficial to employees in allowing them additional time to plan ahead, both financially, and in terms of considering a return to work. It would give employees additional time to prepare any benefit claims that may be necessary. However, some of our members are concerned that there may be a negative impact on administrative and payroll processes.

Longer-term reform of SSP

17. At this stage, there are no plans to change the rate or length of SSP. The Government is interested in views on the impact of the rate and length of SSP on employer and employee behaviour and decisions. If you have any views or evidence, please provide them here.

A large number of our members have an enhanced Occupational Sick Pay Scheme, and for these employers the question is not particularly relevant.

However, general concerns include the potential additional financial burden on employers and the need to avoid creating greater complexities in the system. Our members have also expressed the view that the focus should be on the improvement to the management of sickness absence, rather than changes to SSP. One of our members has commented that "Clearly there is a balance [to be found] to ensure individuals do not return too early from

sickness absence due to financial hardship, but it is felt that the efforts concerning the management of sickness absence should be the priority in returning people to work and not amendments to SSP.” Another has stated that there is a need to “improve return to work programmes and initiatives to incentivise and educate people on the benefits of returning to work with a phased approach (especially where illness is related to mental wellbeing and stress in the workplace.) i.e. mechanisms need to be put in place to get professional help for those affected and for the root cause to be found, and steps put in place for recovery.”

Overall our members feel that within the HE sector, the entitlements offered under Occupational Sick Pay schemes influence employees’ return to work following sickness absence to a greater extent than the rate or length of SSP.

Improving standards in occupational health

18. What indicators of quality and compliance arrangements would help you choose an OH provider?

- Work outcomes
- Quality marks
- Process times
- Customer reviews
- Other – please state
- ~~Don’t know~~
- ~~Indicators won’t help~~

This question is of particular interest to our members, with many citing other indicators that would enable them to choose an OH provider. These include:

- Sector-specific knowledge. Experience would suggest that in many cases OH providers, unfamiliar with the sector, can find understanding an organisation involved in such diverse work, with an associated diverse workforce, challenging.
- Feedback on the quality of reports. Our members want to receive constructive advice regarding the employee’s ability to return to work and reasonable adjustments that could be made to facilitate this. They do not wish to receive reports where OH providers “sit on the fence” or simply repeat what the employee has described to them.
- Evidence of the ability to work in partnership with the employer. Our members wish to see a demonstrated commitment to working with the employer to establish reasonable balanced outcomes, rather than providing an advocacy service for the employee.
- Information on turnaround times.
- Information regarding links with other professionals such as GPs.
- Information on the qualifications of staff; SEQOHS accreditation.
- Information on the availability of services by location.
- References from organisations within the same sector/personal recommendations (in addition to ‘customer reviews’ which would be of a more general nature, but also useful).
- Information on the size and scale of the provider.
- Evidence on the cost effectiveness of the provider. This could include, for example, any information available on the impact the provider has had on facilitating the return to work of employees, or indeed other outcomes. However, it is noted that many referrals are complex and/or experience delays outside the control of an OH provider, so these measures are not always a robust indicator of the standard of service.
- Information on data security measures put in place by the provider.

Advice and support for employers

19. Do you need more information, advice and guidance?

Yes / ~~No~~

20. If so, what content is missing?

- Legal obligations and responsibilities/employment law;
- Recruiting disabled people and people with health conditions;
- Workplace adjustments, such as Access to Work;
- Managing sickness absence;
- Managing specific health conditions;
- Promoting healthier workplaces;
- Occupational health and health insurance;
- Best practice and case studies;
- Links to other organisations, campaigns and networks;
- Local providers of services and advice;
- ~~Other – please state.~~

The majority of our members who have commented are particularly interested in the availability of information, advice and guidance in the following areas:

- Workplace adjustments, such as Access to Work.
- Managing specific health conditions.
- Promoting healthier workplaces.
- Links to other organisations, campaigns and networks.
- Local providers of services and advice.

We are also interested to know whether there will be any reform to the Access to Work scheme in the light of these proposed changes.

Reporting sickness absence data to the Government

21. Do you agree with the proposal to introduce a requirement for employers to report sickness absence to Government?

~~Yes~~ / No / ~~Maybe~~ / ~~Don't know~~

Please give reasons for your answer.

The majority of our members who have commented do not agree with this proposal. The consultation refers to providing 'timely and targets prompts to SMEs on how best to manage their employees' sickness absence'. This requirement may be helpful for SMEs with very limited resources and less experience, but it would not assist large organisations in the HE sector where there are already established sickness absence procedures in place. The administrative burden of such a requirement would outweigh any possible benefits to employers in our sector. For example, UCEA conducts annual sickness absence surveys for the sector, so our members already have access to up to date benchmarking information.