

# THE DEFINITIVE GUIDE TO MANAGING SICKNESS ABSENCE



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Employment Law / HR / Health & Safety

# Welcome to The Definitive Guide to Managing Sickness Absence

You may be thinking thinking “Why do I need this guide when the information is already freely available on the web?”

Well, in this guide, I’m not only going to tell you what the law says...

I’m also going to tell you how you can take very specific steps and actions to address and reduce sickness absence within your organisation, leading to happier, more engaged employees.

The impact of absences on companies and organisations can be significant. Short term sickness accounts for **nearly 80% of all absences and costs the UK economy billions of pounds a year.**



Not only that, but it can mean a drop in business productivity levels; a negative impact on service delivery; client dissatisfaction, low team morale and high employee stress levels.

So let us take you through what you can do to manage your employees’ sickness absences...

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**Ellis Whittam**

How to immediately reduce short term absence with a single document

How to reduce short term sickness absence even further

How to stop and dismiss malingerers in an efficient and compliant manner

How to stop small issues from escalating into much bigger problems

How to manage disabilities in a way that is fair to everyone

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# 1 How to Immediately Reduce Short Term Absence with a Single Document

In this section I'm going to introduce you to a document you can use that has an immediate effect on your levels of short term sickness absence.

It's a document that you probably already have, but it's not been given the attention it deserves.

That document is a **Sickness Absence Policy**.

Allow me to explain why I think this document will have such an immediate effect.

A Sickness Absence Policy allows you to clearly communicate your expectations to all employees. This lets genuinely sick people know how you will support them and malingerers that you can - and will - take disciplinary action.



A malingeringer is someone who pretends to be ill in order to avoid fulfilling their work duties.

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## EXPERT TIPS

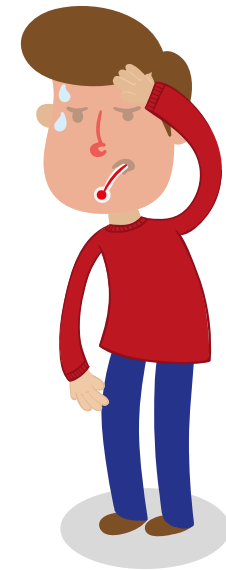
- ✓ Get employees to sign a receipt to show that they have read the policy. This way, they cannot argue that they were not aware of your expectations.
- ✓ Make sure the policy is easily accessible. It may be found in the employee's Contract of Employment, the Staff Handbook or on the Company's Intranet.
- ✓ Ensure your policy clearly sets out sick pay arrangements. It is a legal requirement to provide details of sick pay arrangements in the employee's written statement of terms and conditions.

## CONTENT OF A SICKNESS ABSENCE POLICY

The Policy should set acceptable levels of attendance by way of trigger points. It should also contain a process for reporting absence.

You may:

- simply set a threshold of a certain number of days' absence in a given period; or
- trigger the procedure where an employee's absence reaches a set 'Bradford factor' score.



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The **Bradford factor score** means that more weight is given to the number of absences instead of the duration. A high number of short absences will score much higher than fewer long absences.

The Bradford Factor is calculated as follows:

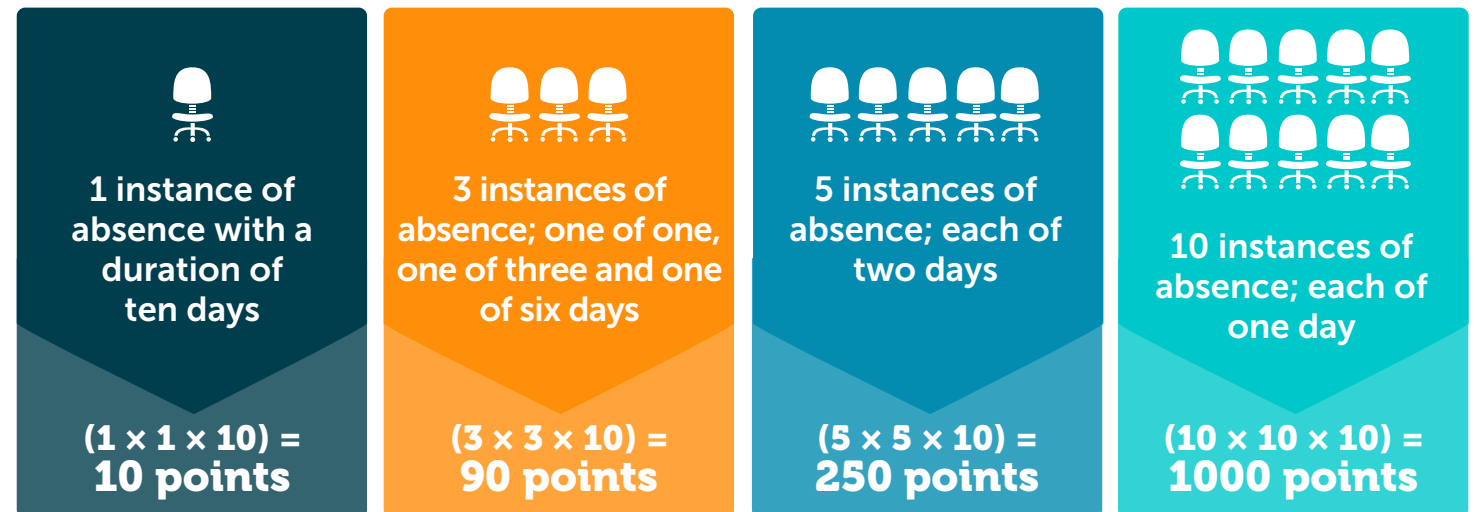
$$B = S^2 \times D$$

where:

- B** is the Bradford Factor score
- S** is the total number of spells (instances) of absence of an individual over a set period
- D** is the total number of days of absence of that individual over the same set period[2]

The 'set period' is typically set as a rolling 52 week period.

For example, this is how 10 days absence could be shown:



A score above 450 is generally categorised as "recommended dismissal" whilst a score between 250 and 499 is categorised as "final written warning".

The Policy should also describe what will happen once those triggers have been met.

A sickness management process usually consists of the following steps:

- 1** A formal written warning/caution for absence, with clear targets for improvement and acceptable levels outlined;
- 2** If these targets are not met, a formal final written warning/caution for absence, again with clear targets for improvement and acceptable levels;
- 3** If these are not met, dismissal may result.



**EXPERT TIP**

- ✓ Train your managers so they understand the process in full and can apply it correctly and consistently.



**Please note:** A sickness management process runs separately and independently of any disciplinary or performance management process.

## 2 How to Reduce Short Term Absence Even Further

As well as introducing a Sickness Absence Policy, you can also take one more step...

### RETURN TO WORK MEETINGS

Return to work meetings are a proven way of reducing sickness absence, in particular with spurious absence cases.

Think about it - an employee who is not genuinely ill is less likely to take sickness absence if they know they will have to face some rigorous questioning upon their return!

Holding a return to work interview on every occasion that an employee returns after absence from work allows you to understand:

- the reason for absence
- whether absence is due to illness
- the nature of the illness
- the duration of the illness
- whether the employee is fully recovered
- whether the illness is part of an ongoing condition

- what adjustments you can make to help them improve attendance

Once you have completed the return to work interview, you can then decide whether any further action is needed.



#### EXPERT TIPS

- ✓ Remember, do not make assumptions about your employee's circumstances. Listen to what they say in the meeting, be objective and take it on board.
- ✓ Keep a written record of every return to work meeting so you can refer back and see if there are any wider trends that need addressing.



# 3 How to Stop and Dismiss Malingerers in an Efficient and Compliant Manner

Most people at some point will feel too unwell to attend work. However, there will be some who have a pattern of absence which suggests that they may be malingering. An example of this may be having regular absences on a Friday or Monday.

If an employee reaches the pre-determined levels of absence contained within your procedures, and they do not have a disability, you may issue them a warning as set out in your procedures. This may remind them of what is expected of them regarding their attendance at work. If the employee continues to ignore these warnings, it will not be long before they reach the end of the road and are dismissed.

## INVESTIGATE ABSENCES UPON RETURN

- Find out early the reason for absence. This will enable you to know how to address that absence, either under your sickness management or disciplinary procedures.
- If there is a pattern of absence book-ending the weekend, you can ask the employee whether there is a reason for this. If an employee is malingering, knowing that you are monitoring this may be enough to prevent it continuing.
- If the employee says, for example, that they were hung-over, this would be treated as a disciplinary issue.



- If there is a pattern of sicknesses, the investigation will allow you to find out more information in order to establish if there is an underlying condition which could be a disability.



**Warning!** Failure to investigate absences upon return in a timely manner will send a message to employees that they may have got away with the absence, or that you do not believe that this is an issue worth addressing. This is not the message you want to send.

### APPLY YOUR SICKNESS MANAGEMENT PROCEDURES

Taking employees through your set procedures in a consistent manner will assist in showing that any subsequent action taken is reasonable.

### SICKNESS AS A DISCIPLINARY ISSUE

An employee who lies about being too sick to work could find themselves dismissed a lot sooner than they would under your sickness management procedures.

If evidence comes to light that an employee who has said they were too ill to come to work was, in reality, fine, this could potentially amount to gross misconduct.

This does not mean that you should be suspicious of every absence, but if, for example, it comes to your attention that a person who is supposed to be bedbound has been posting pictures on Facebook playing football, you would be fully entitled to investigate this further.

Before dismissing an employee it is **advisable to take legal advice**.



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### EXPERT TIP

- ✓ If you are considering going through a disciplinary process, ensure that you follow your own procedures, in particular carrying out a full investigation before moving to a formal disciplinary hearing.



**Warning!** You should seek legal advice if any employee is off work with any of the following:

- Depression, anxiety or any other mental health issue
- As a result of workplace disputes
- Pregnancy related illness
- Stress
- Chronic and recurring health conditions
- Cancer, multiple sclerosis or HIV
- Blindness, severe sight impairment, sight impairment and partial sightedness
- Severe disfigurements, with the exception of unremoved tattoos and piercings

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## 4 How to Stop Small Issues from Escalating into Much Bigger Problems

While short term absence can be disruptive, as long as the above steps are put in place and any issues are addressed, it should remain a small issue. However, when this turns into a longer period of absence, the risks and disruption can be far greater.

Unfortunately, there may be situations where an employee has a prolonged period of absence because of a more serious medical condition. This will inevitably be disruptive for your business, especially if the employee carries out an integral role.

The longer someone is off work, the harder it becomes for them to return.

So what do I do? Taking proactive steps to manage long term sickness absence will help minimise the disruption to your organisation and reduce your risk.

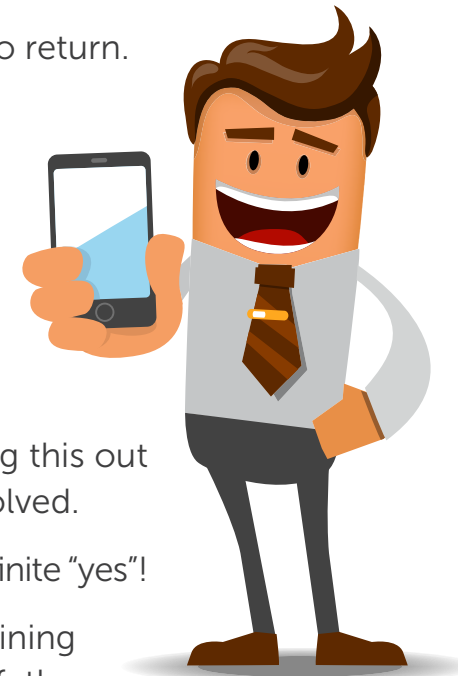
### ADDRESS THE ABSENCE EARLY

Addressing the matter early on will allow you to plan ahead and understand what your obligations are to the employee.

If the reason for the absence is because of an issue at work, finding this out early on will give you an opportunity to see if the issue can be resolved.

Should you stay in touch with an absent employee? The answer is a definite “yes”!

If short term sickness evolves into longer term absence, maintaining regular contact with the employee will keep you informed of the employee’s progress and whether there are any steps you can take to



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assist them back to work. If a return does not look likely in the near future, plans can be made to put in place temporary cover.

Maintaining contact will also ensure that lines of communication remain open and can help prevent the employee becoming isolated from the workplace.



### EXPERT TIP

- ✓ Holding welfare meetings, either at the workplace or at the employee's home, will enable you to gather the information you need about the absence and maintain open lines of communication.

However, you must remember to strike a good balance of how often to keep in touch. The employee must not feel cut off by their manager, but equally they should not feel harassed by frequent calls or visits.

## OBTAIN MEDICAL EVIDENCE

Understanding the reasons for the long term absence will allow you to make an informed decision as to whether the employee can return to work at all and if so, when and in what capacity.

You can obtain medical evidence either from a GP or an Occupational Health Report. You will usually need the employee's written consent, especially if the report is to be obtained from their GP or the consultant treating them. The employee will first have to give his or her consent to the report and be informed in writing of their rights under the Access to Medical Reports Act (AMRA).



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The medical report may also flag up any conditions which could amount to a disability under the Equality Act 2010. This will alert you to the need to consider whether reasonable adjustments should be made to the employee's working practices and may also give details of suggested adjustments that might help them back to work.



### EXPERT TIP

- ✓ You can't force an employee to give their consent to obtain a report. However, you can explain that without a report, decisions about their future employment will have to be made without one.

## RECRUITING COVER

In the short term, you may alleviate some of the pressure on the business and colleagues by having someone else cover the employee's work.

You could recruit an agency worker (perhaps from an agency that specialises in your sector), where there will be no employment relationship. This means that they may be transferred to a different project and a different worker may be brought in to cover the absence.

If you have a better idea of when the absent employee may return, you may hire a temporary worker. To avoid any potential claims, ensure you make it clear that from the start that the position is temporary. You may draft the fixed-term contract so that the employment relationship terminates on a specific date or on a specific act occurring, for example the return of the employee. Please contact us for more information.





**Warning!** It is important that this should be a temporary measure until you know what is happening with the absent employee – whether they are able to return at all, or with adjustments to the role or to a different role. Once you know this, it will be possible to put in place more permanent arrangements.

## “FIT FOR WORK” SCHEME

In order to try and assist employers getting employees back to work following a period of sickness absence, the Government introduced the Fit for Work scheme in September 2015.

The scheme is open to employers and GPs in relation to eligible employees and offers free Occupational Health referrals.

### *Who is eligible?*

Eligible employees are:

- employees who have been absent from work for 4 weeks or more; and
- there is a reasonable likelihood of them being able to return to work within 3 months; and
- a referral has not been made to the scheme for them in the last 12 months.

### *What happens if a referral is accepted?*

An Occupational Health Advisor will make contact with the employee in order to arrange a telephone consultation. This will result in a Return to Work Plan being formulated that can be shared with the employer subject to the employee’s consent.

The Government has issued some guidance for employers, which can be found at [fitforwork.org](http://fitforwork.org).



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## 5 How to Manage Disabilities in a Way that is Fair to Everyone

Workers who are disabled within the meaning of the Equality Act 2010 have additional legal protection.

What does “disability” mean to you?

The definition of “disability” is wider than you may first think. In fact, the worker only needs to show that they suffer from a long term (i.e. 12 months or more) physical or mental impairment which has a substantial (i.e. more than trivial) effect on their ability to carry out day-to-day activities.

A disabled worker is entitled not to be treated less favourably because of a disability or receive unfavourable treatment because of something arising out of their disability. Employers must also make reasonable adjustments to the worker’s working practices, policies and procedures if they can.



**Warning!** Falling down at any of these hurdles could result in a disability discrimination claim and is likely to be very costly.

### GET INFORMATION ABOUT THE MEDICAL CONDITION

Getting information about the worker’s medical condition, prognosis and likely period it will affect them will enable you to know:

- whether or not they are likely to be classed as disabled



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- whether there is a duty on you to consider making reasonable adjustments regarding disability related absences
- how long such absences may last and how often they will occur

### HOW TO OBTAIN THE INFORMATION

There are a number of ways:

- Ask the worker. This must be done sensitively since you will be talking about very personal issues.
- Obtain a medical report. As mentioned earlier in this guide, the consent of the worker will be required. You can either ask for a report from the worker's GP, consultant or from an Occupational Health Advisor.



#### EXPERT TIP



Before applying for a medical report, have a think about who is best placed to give the advice you need – GP reports are generally cheaper, but an Occupational Health report may provide more practical, workplace advice.

### SHORT TERM SICKNESS ABSENCE

Simply applying your standard sickness management triggers to disability related absences could result in you discriminating against that worker.

You must consider whether certain absences should be disregarded for these purposes and, if so, how many. This is why accurate data recording the reason for absence is so crucial.

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Investigating the absences at each stage will be very important in order to ensure that you have the most up-to-date information about the employee and that you are complying with any legal obligations that apply to you.

In order to make an informed decision, medical evidence should be obtained.



**Warning!** This is a tricky area and will very much depend on the worker's medical condition and how long this is likely to continue. Expert legal advice should be sought in order to consider what new threshold, if any, should be set.

## REASONABLE ADJUSTMENTS

There is an obligation on employers to consider making reasonable adjustments to a worker's workplace if they are disabled as defined under the Equality Act. What may be considered to be a reasonable adjustment is very wide and includes:

- Doing things another way – e.g. allowing someone with social anxiety disorder to have their own desk instead of hot-desking
- Making physical changes – e.g. installing a ramp for a wheelchair user or an audio-visual fire alarm for a deaf person
- Letting a disabled person work somewhere else – e.g. on the ground floor for a wheelchair user
- Changing their equipment – e.g. providing a special keyboard if they have arthritis
- Allowing employees who become disabled to make a phased return to work – e.g. working flexible hours or part-time
- Offering employees training opportunities, recreation and refreshment facilities

Remember, cost alone will not make an adjustment “unreasonable”.



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## 6 How to Cut the Cord on Long Term Sickness Cases

When a worker's sickness goes on for so long that it appears unlikely that they will be able to return in any capacity in the foreseeable future, then you may be able to dismiss on medical capability grounds.

You must carry out a number of steps before considering dismissing a disabled worker on long term sick leave:

- Maintain regular contact with the worker. This will ensure that you have the most up-to-date information about the worker's progress. For example, they may tell you that they have an appointment in two months' time. You can then touch base with the worker after that to see if there are any developments.
- Obtain medical evidence. Having an expert opinion on the worker's medical conditions will help you:
  - get a prognosis regarding the worker's conditions;
  - find out if, and when, the employee may be able to return to work; and
  - establish whether there are any adjustments that may help the worker returning to work, for example reduced hours.
- Discuss the medical evidence with the worker and get their comments. Find out from the worker whether they feel there is anything you can do to help them.

If, after taking the above steps, all avenues are exhausted and there is nothing that can be done to get the worker back to work, then it may be safe to move to dismissing.

## 7 How to Identify Engagement Issues the Business Needs to Fix

An employee who is not passionate about their job or invested in the success of your business is less likely to care about the impact their absence from work has on you and others.

If someone is taking regular absences for general sickness reasons, it could be a sign of engagement issues.

### PROBE THE REASONS FOR REGULAR ABSENCE FROM WORK

Finding out not only the reason for absence, but also the possible cause, may give an indication that there are engagement issues.

Simply stated, ask the employee:

- What was the reason for the absence?
- If the absence was because of, say, stress, ask them what may be causing that stress.
- If the stress is caused by work, get details about this and see whether or not it is possible to alleviate that stress. For example, you could consider reducing the workload if that is an issue.
- If the stress is caused by other factors, ask whether there is anything that you can do to help.



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- If the absence was because of, say, headaches, ask them what may be causing those headaches. It could be something work related.

The same principle will apply for most types of absence.



### EXPERT TIP



This can be done as part of the return to work process mentioned in the second section. Showing the employee that you care will create goodwill which, in turn, will hopefully increase engagement.

## INVESTIGATE ANY WORKPLACE ISSUES

If an employee believes that issues they raise will just be ignored, they are less likely to care about their work or want to work in that type of environment.

This is not what an employer wants.

If an employee raises workplace issues that affect their engagement with the business, you should deal with the matters quickly, especially potentially serious issues such as bullying, harassment and discrimination. Failing to deal with such issues is likely to affect not only the complainant's work, but also other employees.



**Warning!** If someone says that their absence is caused by someone bullying, harassing or acting in a discriminatory manner towards them, seek expert legal advice.

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## INTRODUCE BENEFITS

Rewarding employees for good work will encourage them to invest their time and energy in your business and attend work more regularly.

You may be wondering what types of benefits you could use to encourage employees to stay with you and exceed expectations. You could consider:

- Pensions and private health care insurance. These may assist in retaining staff.
- Bonus schemes. These will help reward those who meet or exceed their targets.
- Commission schemes. Making additional payments to employees for income they generate for the business will hopefully incentivise attendance levels.
- Attendance bonus. Rewarding those employees who do not have sick days may be a good way of encouraging malingerers to attend work rather than “pulling a sickie”.





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