

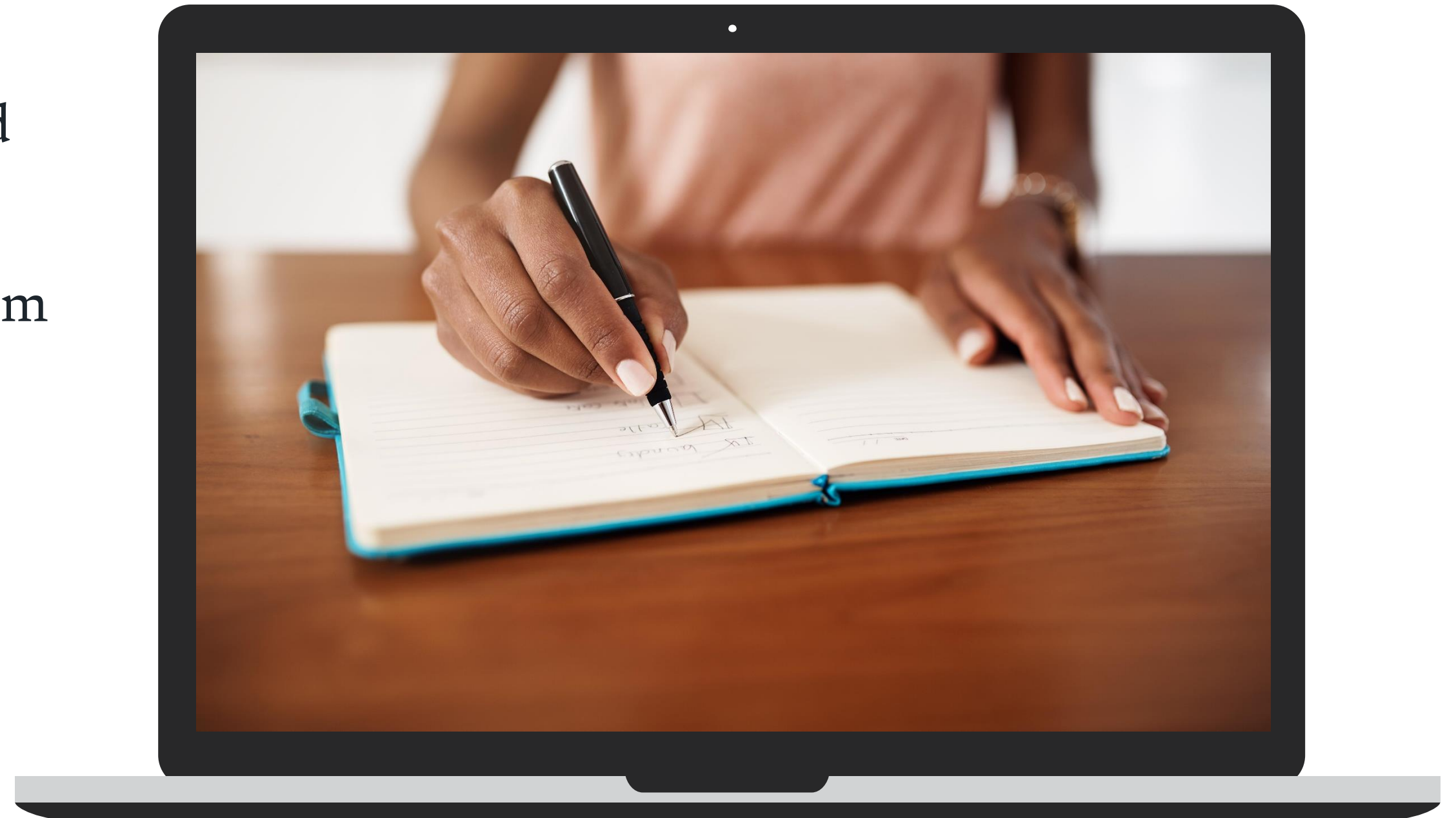
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Managing sickness absence

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What will we cover today?

- Why absence management is important
- Overview of an employer's obligations and key areas to consider
- The difference between short and long-term absence and why the distinction alters the approach
- Dismissal / alternatives to dismissal
- Some tricky areas and how to effectively overcome them



Why is managing sickness
absence important?

Why is managing sickness absence important?



Management time

- Supporting the employee through the process
- Rearranging work / taking on additional work
- Potentially being a witness in a Tribunal claim

Cost to business

- Lost productivity / output
- Unfair dismissal claim
- Disability discrimination claim
- Legal costs

What an Employer should consider

- Common law and statutory duties
- Contract of employment
- Sickness absence policies
- Reporting sick leave
- SSP vs company sick pay
- Permanent health insurance

Types of sickness absence

- Short term absence due to illness
- Long term absence due to illness
- Unauthorised/non-genuine/elective



Short-term and long-term sickness absences

Short term absence

- Usually takes the form of:
 - minor one-off absences: for example, toothache, colds, muscular sprains and strains, migraines etc
 - minor absences that occur more regularly: for example, an employee may be off with minor strains/injuries etc four times in a year or may be off every few weeks with a migraine



Medical information relating to sick leave



- Self-certification
- Statement of fitness of work
- Issued by a GP if an employee is absent for 7 calendar days (including any days the employee doesn't work)
- 'Fit for work' or 'may be fit for work'
- Provides evidence of incapacity for statutory sick pay purposes
- Allows GP to suggest alterations to the employee's duties, hours or working patterns

Return to work meetings

- Return to Work (RTW) Meetings
 - Opportunity for management to raise concerns and explore underlying reasons for absence
 - Can discourage employees taking sickness absence.
 - Identify if recurring pattern of absence
- Check absence policy for timescales – usually a RTW should be held as soon as an employee returns from any absence
- Return to Work Risk Assessment

Long term absence

- Employee is off work for a prolonged period
- Should consider if the employee might be disabled considering any medical evidence
- Consider duty to make reasonable adjustments
- Role of Occupational Health



Long term absence meetings

- Broader keeping in touch considerations
- Series of meetings will be necessary particularly in cases of long-term absence. These should be conducted sensitively.
- Consider:-
 - How employee is feeling and views on any return to work
 - Any reasonable adjustments that can be made
 - Any medical evidence and dates for any reviews, operations
 - The effect of the employee's absence on the business
 - Any alternatives the employee may wish to consider to dismissal such as redeployment
 - Possible termination of employment (at an appropriate stage when HR have been consulted)

Right to be accompanied at meetings



- It is good practice to give employees the right to be accompanied at formal sickness absence meetings, if the outcome could be a warning or dismissal
- In appropriate cases, consider holding meetings at home or an alternative venue and/or allowing a friend or family member to accompany seriously ill or disabled employees

Returning to work after long term sickness

- Assist in establishing an employee's return to work and reintroduce them to work
- Phased return?
- Identify whether any reasonable adjustments might be required
- Key is to manage any return from long-term absence sensitively!

Reasonable adjustments

- Definition of disability

Disabled person have a physical or mental impairment that has a substantial and long-term effect on their ability to carry out day-to-day activities

- What is the duty?

- Duty to accommodate the needs of disabled employees, including making reasonable adjustments
- Reasonable adjustments are not any adjustment requested by a disabled employee, but one that is reasonable in the circumstances



Reasonable adjustments

- What is the purpose of an adjustment?
 - In *Salford NHS Primary Care Trust v Smith*, the EAT commented that the reasonable adjustment is “***primarily concerned with enabling the disabled person to remain in or return to work with the employer***”, or “***to enable disabled people to play a full part in the world of work***”

Reasonable adjustments

- What will be considered?
 - The extent to which the adjustment would have ameliorated the disadvantage.
 - The extent to which the adjustment was practicable.
 - The financial and other costs of making the adjustment, and the extent to which the step would have disrupted the employer's activities.
 - The financial and other resources available to the employer.
 - The availability of external financial or other assistance.
 - The nature of the employer's activities and the size of the undertaking.

Reasonable adjustments

- Which adjustments were considered reasonable by a Tribunal?
 - An adjustment to an employer's sick pay policy to enable a disabled employee to continue to receive sick pay for longer than a non-disabled employee.
 - Allowing a support worker to accompany an employee suffering with anxiety and depression to a performance review meeting
 - Request for a career break
 - An employer's failure to facilitate a disabled employee's application for ill-health retirement could not be a breach of its duty to make reasonable adjustments. The duty to make adjustments does not extend to enabling a colleague to leave the employment on favourable terms.

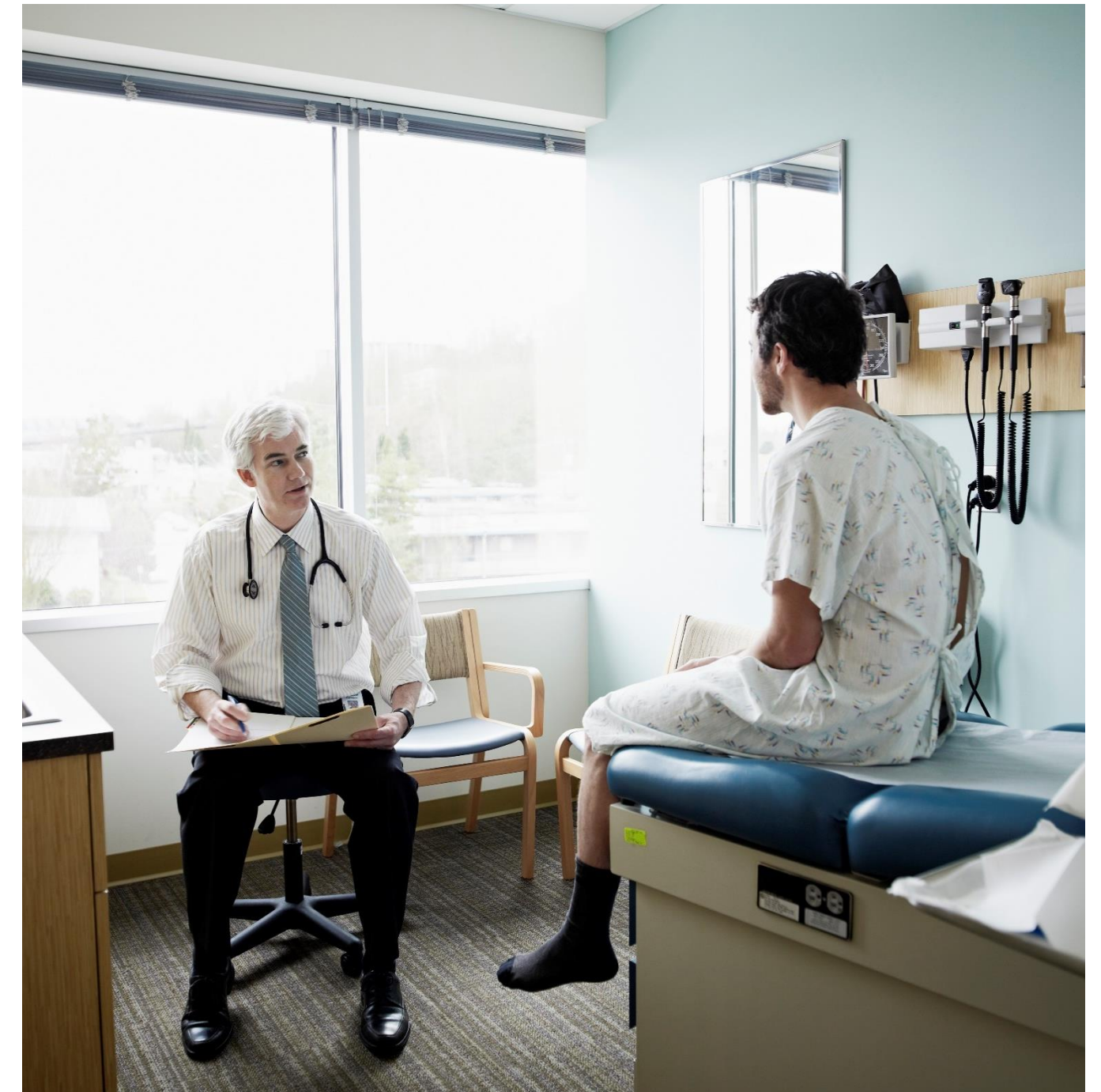
Practical tips for effective absence management

Ongoing considerations

- Verifying that the ill-health is genuine
- Identifying cause of the ill-health and whether it is work related
- Determining what support measures can be implemented
- Seeing if pattern of absence emerging
- Arranging absence cover and support for the team
- Determining if an employee is likely to return to work
- Keeping in touch protocols
- Is termination an option? Any PHI policy?

Medical evidence

- Medical evidence can often assess:
 - likely duration of sickness absence
 - condition and impact of the employee's health
 - if employee should return to lighter duties
 - if employee has a disability, reasonable adjustments
 - if employee should return to different/reduced/more flexible hours of work
 - if a return to work is possible
- If a written report is prepared, meet with employee to discuss contents before taking any action on any recommendations
- Occupational Health / Company Doctor or GP report?



Dismissal / alternatives to dismissal

Contemplating dismissal

- Risks of not dismissing
- Write to employee with sufficient information:
 - **Short-term:** Why absence is unacceptable, steps to address issue, refer to warnings
 - **Long-term:** Length of absence, impact on business, summarise any medical evidence including any adjustments
- Confirm location, timing of meeting and that an outcome may be dismissal – right to be accompanied!

Dismissal

- Meeting the employee
- Where employee fails to attend
- Dismissal
 - Long-term absence – due to incapability due to ill-health (“Capability”)
 - Short-term absence – due to persistent absenteeism which has reached an unacceptable level (“SOSR”)
- Appeal meeting
 - Independent and more senior manager

Ensuring a fair dismissal

- Consider the nature of the employee's illness
- Medical advice indicated employee not fit to return in long term.
- Consider any reasonable adjustments
- Consider if the employee's job can be kept open any longer
- Following a fair procedure is crucial

Tricky areas and how to effectively overcome them

Return to work where employee remains signed off

- Leads to uncertainty about employee's return to work
- Obtain medical advice and undertake a risk assessment prior to sanctioning return to work
- If no evidence provided, then not obliged to allow a return to work

Holidays and sickness absence

- Workers can take statutory holiday during sickness
- Holidays accrue during sickness
- Carry-over of annual leave due to sickness
- Limitation
- Right to rearrange pre-booked sickness-affected holiday
- Re-arranging current sickness-affected holiday



Notice pay



- Employee on long-term absence may be entitled to full pay during notice period:
 - If statutory minimum notice period: full pay
 - If contractual notice is at least 1 week more than statutory minimum: no pay (assuming Company sick pay/SSP is exhausted)

Pregnancy related illness



- Pregnant employees/employees on maternity leave have a protected period
- Certain 'trigger' points of aggregated sickness must not be taken into account if absence related to maternity/pregnancy falls within the protected period
- End of maternity period – treat in normal way

Data protection issues

- ‘Data concerning health’ means personal data related to the physical or mental health of a natural person, including the provision of health care services, which reveal information about his or her health status.
- Special category data
- Sharing health information
- ICO Employment Practices Code on data protection.



Questions?

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