



Sickness Absence and Medical Capability Policy and Procedure (LSC)



LYDIATE
SERVICES
COMPANY

LYDIATE
LEARNING TRUST

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Policy

Lydiate Services Company (LSC) understands that employees may need to be absent from work from time to time due to sickness. This policy covers employees and their line managers in handling time off from work where the reason for absence is sickness. LSC aims to have as many employees as possible in attendance at all times during the working week. Sickness absence needs to be managed so that an acceptable level of attendance can be achieved and any problems resolved.

This policy also outlines the process to be taken when an employee is incapable of carrying out their job role due to a long-term illness or a disability, the outcome of which could be a transfer to another position or a dismissal on the grounds of capability.

Sickness Absence

“Sickness” is defined as an incapacity to carry out the duties and responsibilities which the employee is contractually obliged to do because of their illness or accident and resulting incapacity to work.

This policy therefore applies to absence caused by personal illness or accident, not to the need to take time off work because of the illness or accident of others, e.g., children or partners.

Please note

Any employee who fails to comply with notification or certification procedures contained within this policy, or otherwise abuses the organisation's rules on sickness absence, should know that the matter will be dealt with under the disciplinary procedure.

Procedure

Notification

If employees are unable to attend work due to sickness absence, they must notify their line manager by as soon as possible by telephone on the first day of the absence. They will need to explain why they are unable to attend and indicate when they will likely be able to return to work.

Certification

Absences should be certified via a fit note from a GP, or other relevant clinician, such as a nurse, occupational therapist, pharmacist, or physiotherapist working a general practice or hospital setting. However, if the employee is absent for seven calendar days or less in each instance, the employee may instead self-certify their absence.

For absences of seven consecutive calendar days or less, upon their return to work, a self-certification form should be completed and passed to the employee's line manager. A self-certification form can be obtained from HR.

For absences of eight days or more, a fit note is required. Fit notes are issued by a medical professional working in a general practice or hospital setting, and should be passed to their line manager upon their return to work, or sent on as soon as they are received, by post / electronically for absences lasting over e.g. 2 weeks/one month. The fit note should cover each day of absence and, if multiple fit notes are issued, they

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should be posted to the employee's line manager with a brief explanation of their absence, the condition and, if known, their expected return to work date or next medical appointment.

Failure to follow the certification process outlined above may be considered misconduct and may be dealt with under the LSC's disciplinary process. Contractual sick pay and SSP (statutory sick pay) may be withheld during this time.

Return to work

On return to work, the employee should report to their line manager before they begin work. They will ask about the illness and recovery. They will also ask the employee to complete a self-certificate for the first seven days of illness. They need to countersign the self-certification form if the employee is to receive any sick pay for which they may be eligible. No matter how short the period of sickness, it must be covered by a self-certificate and/or doctor's certificate.

Please note: the seven days includes those days on which the employee does not normally work, e.g. weekends and public holidays.

In some circumstances a return to work interview will be arranged by the line manager with the employee. The return to work interview will confirm the employee's fitness to return to work, update the employee on any changes that may have taken place in the workplace during their absence, and confirm whether any necessary support is required and make arrangements for this as appropriate.

The employee's sickness absence will be marked on the employee's personnel record.

Fit notes

A fit note may make a recommendation for temporary changes to be made to the employee's working environment or conditions to facilitate a return to work.

Where a fit note is marked as "may be fit for work", the note usually sets out the possible alternations or amendments that could be made to the employee's working practices to facilitate their fitness for work. Examples of the options available are:

- phased return to work
- amended duties
- altered hours
- workplace adaptations.

If the employee's doctor provides a certificate stating that the employee "may be fit for work" the employee should inform their Line Manager immediately. The Organisation shall discuss with the employee whether there are any additional measures that may be needed to facilitate the employee's return to work, taking into account the doctor's advice. If appropriate measures cannot be taken, the employee will remain on sick leave and LSC will set a date to review the situation.

Adjustments to the employee's work

LSC will send a letter confirming the discussion and any agreed adjustments that will be put in place, how long they are expected to last for, and set a date for a review of the measures. The changes should be temporary and should not be considered permanent changes to the terms and conditions, unless otherwise agreed.

A review will be arranged before the end of the adjustment period to assess their continued suitability against the employee's medical needs, and the needs of the

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business. It may be that any adjustments are continued, amended, or stopped. A discussion will take place with the employee to confirm this.

Phased return

Should a phased return be recommended by a medical professional, or if LSC deems it to be appropriate to help the employee settle back into work, this will be discussed with the employee. A plan will be put in place as to how the return will be managed, and review dates will be set with a view to building the employee back to their full duties and hours.

LSC will confirm in writing the employee's return to work plan. This should not be seen as a change to the employee's terms and conditions, and it may be subject to change depending on the employee's medical needs or the needs of the business.

Medical examination

Occupational health

If LSC has cause to be concerned about the employee's health, e.g., the employee has had a number of periods of sickness absence for the same reason in a short period, or the employee's absence has become long term then the employee's line manager may suggest that the employee undertake an assessment with LSC's preferred medical provider.

In certain circumstances, especially if the employee's sickness absence may impact on the employee's long-term employment, then LSC may ask the employee to consult a medical practitioner of its choice, to have the employee's fitness to work arrangements assessed and confirmed.

Should LSC seek further medical information, the employee will be provided with detailed information relating to the report, and the employee's access to it, and the employee will be asked to provide written consent.

Access to medical reports

LSC may need to request a copy of the employee's medical reports or medical records to assist in the assessment of the employee's medical condition. The employee's consent, in line with requirements under the Access to Medical Reports Act 1988, will be obtained prior to LSC making contact with the employee's GP and the employee is entitled to see a copy of the documentation provided. In line with data protection legislation, the employee will also be given details on the reason for the examination, what LSC intends to do with the data obtained and the lawful basis for processing the data.

Should medical information be obtained by either route, LSC will meet with the employee to discuss it. There may be changes required to the employee's work or LSC's processes as a result of the medical information obtained, in which case this will be discussed and agreed with the employee where business requirements allow. Any outcomes will subsequently be provided to the employee in writing.

Frequent and short-term absences

Trigger levels are established to support the effective management of sickness absence, ensuring the consistent application of the policy and providing a clear standard for all

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employees. These trigger points serve as indicators for the Trust to review an employee's absence record and determine whether further action is required. Absence triggers will be applied on a pro-rata basis for part-time employees. The Trust will also consider reasonable adjustments to trigger points for employees with disabilities, in line with its obligations under the Equality Act 2010. Pregnancy-related absences will be excluded from trigger calculations. Each case will be assessed on its individual merits, taking into account the specific circumstances, as well as the nature and pattern of the absences.

Reasonable trigger points that may prompt a review of an employee's absence record include instances where, during a school term or other defined period, an employee is absent as follows:

- Three or more occasions in any rolling 12-month period;
- 14 or more days in any rolling 12 months.
- Any other pattern that causes concern.
- Have discussed matters at a return-to-work interview that require investigation; and/or
- Have been absent for more than 28 days.

The policy may still be applied where the employee persistently falls just below the trigger points and where the absence is perceived to be a problem.

Informal meeting

The line manager should meet informally with the employee to discuss the fact that an absence trigger has been reached and to discuss necessary actions, such as considering a referral to Occupational Health; implementing reasonable adjustments that may be necessary in relation to disability or other medical condition; or, any possible formal disciplinary action. The line manager may establish that there is an underlying medical condition, and it may be that advice is required from HR as to the best course of action to take. Should this be required, a further meeting will be held to discuss the outcome. Disciplinary procedures may not be necessary or appropriate in those circumstances. A summary of the meeting will be kept for the employee's personnel file and a copy given to the employee.

Escalation to formal proceedings

Following the informal meeting, should no improvement be seen in the sickness absence and/or a further trigger point be reached, an investigation into the absence will take place with the employee. A meeting will be held to discuss the absences, and again seek to establish if there is an underlying cause that needs to be accommodated and/or further investigated. Should this not be the case, the employee's line manager may proceed to formal disciplinary action for high absence levels. A verbal warning may be the result of a subsequent disciplinary hearing.

Following a verbal warning, should further triggers be hit, and the absence continues to be a concern, further investigations will take place. Should the outcome of the investigation be that the absence levels remain unacceptable, then further disciplinary proceedings may take place. Should the previous warning still be in place, this may be built on following disciplinary proceedings with a written warning.

Following a written warning, should further triggers be hit, and the absence continue to be a concern, further investigations will take place. Should the outcome of the

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investigation be that the absence levels remain unacceptable, then further disciplinary proceedings may take place. Should the previous warning still be in place, this may be built on following disciplinary proceedings with a final written warning.

Dismissal

Following a final written warning, should further triggers be hit, and the absence continue to be a concern, further investigations will take place. Should the outcome of the investigation be that the absence levels remain unacceptable, then further disciplinary proceedings may take place. Should the previous warning still be in place, this may be built on following disciplinary proceedings with a dismissal, following a full examination of the facts and where no reasonable adjustments are appropriate.

Long-term sickness

While the organisation is keen to assist employees who are absent, it cannot offer indefinite support. LSC will be eager to get any employees on long-term sickness absence back into the workplace as effectively as possible, but the employment may need to be terminated if this cannot be achieved. Once the employee has exhausted their 28-week entitlement to statutory sick pay, or before, the employee's manager or someone from the HR department will discuss with the employee their likely return to work date and what work duties they may be able to fulfil. If necessary, LSC will ask the employee's permission to approach their doctor or ask them to consult with a medical practitioner of LSC's choosing, in order to determine the likely length of the absence and identify any reasonable adjustments. If it appears that a return to work in the near future is not reasonably practicable, LSC will discuss the situation with the employee and it is possible that the employee's employment may be terminated under medical grounds.

LSC will usually require employees who have been absent for one month or more, or are expected to be absent for one month or more, to return some or all of their equipment. This may be requested so that the equipment can be redeployed to other employees. Equipment will be returned to affected employees immediately upon their return to work.

If there are regular or persistent absences due to illness, injury etc, LSC is unlikely to be able to support this indefinitely, after making reasonable adjustments. Ultimately, employment may be terminated after full compliance with is unlikely to be able to support this indefinitely, after making reasonable adjustments. Ultimately, employment may be terminated after full compliance with the LSC's termination procedures in these circumstances. See the dismissal section below for more information.

Should this happen, the employee will receive pay in lieu of the employee's contractual or statutory notice period, whichever is longer, and any outstanding holiday pay. The employee may appeal against the decision to dismiss. Any appeal should be made in writing to HR within five working days. The employee has the right to be accompanied to the appeal hearing.

The employee is encouraged to re-apply to join the organisation once the employee is fit to return to work. If there is a suitable vacancy, the employee's application will be given sympathetic consideration.

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Updates during sickness

The employee is expected to keep their line manager updated with details of their health and expected date of returning to work.

Line managers will arrange periodic meetings with the employee to discuss their ongoing absence, so that each side is kept up to date with developments.

The location of these meetings will usually be at the employee's usual place of work but, if a virtual meeting or home visit is necessary due to the nature of the employee's absence, this can be accommodated.

Disability

The Organisation has a duty to make reasonable adjustments where an employee has a disability covered by the Equality Act 2010.

If the absence is because of a disability or the illness leaves the employee in a mental or physical condition which falls within the definition of a disability, the organisation will do whatever it can to make reasonable adjustments to their job to enable them to carry on working. If effective adjustments cannot be made, dismissal may have to take place.

The duty to make the adjustments is 'reasonable' so if the suggested adjustment is not viable it will not be made. It may also be the case that no reasonable adjustments are possible to facilitate a return. There may be no alternative roles or employment available and if there is no prospect of the employee being able to return to work in the near future, it may be inevitable that a decision to dismiss is the last and only option.

The duty to make reasonable adjustments covers elements, such as making changes and adjustments to working hours, adjusting existing equipment, provision of different equipment and amending workplace practices, if the employee is placed at a substantial disadvantage. It may also involve physical changes, such as to the building entrance points, or alterations to the floor plan, furniture etc.

Alternative employment

If an employee is unable to continue in their current role due to ill health or disability, and no adjustments can be made, then LSC will make reasonable efforts to find suitable alternative employment within the organisation. In these cases, the employee's terms and conditions may change from the current role to the alternative role and necessary training will be provided.

Dismissal meeting

A formal invite letter will be sent to the employee inviting them to attend a dismissal meeting, informing them that a possible outcome of this meeting is a dismissal based on capability. The employee has the right to be accompanied at the meeting by a trade union official or a colleague.

At the meeting, the line manager will:

- discuss the reasons for the employee's absence
- review the process so far in terms of support offered to allow the employee to continue in the role
- offer the employee the opportunity to raise any concerns with the process, provide evidence or make representations
- discuss the lack of availability of alternative roles

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- ensure detailed notes are taken in the meeting.

If any new information comes to light in this meeting, the meeting will be adjourned to allow a full consideration of this information. The meeting will then be reconvened to inform the employee of the decision. Where a decision to dismiss is reached, this will be confirmed to the employee in writing.

Employees have the right to appeal against any dismissal decision. Further details on this right are set out in LSC's disciplinary and dismissal appeals procedure.

Payment arrangements and insurance

Statutory sick pay (SSP)

All employees have a right to statutory sick pay (SSP) as long as they earn more than the lower earnings level (the HR department can confirm the current rate). SSP is not payable for the first three qualifying days of absence. (A qualifying day is a day on which the employee is normally expected to work under the employee's contract of employment.)

There is a limit of 28 weeks SSP in any one period of sickness or linked periods. (Periods of sickness are said to be linked if the second period starts within eight weeks of the end of the first period.)

SSP payments are made subject to tax and national insurance deductions.

Any occupational sick pay (i.e., sick pay over and above the statutory amount) paid by the organisation is entirely at the discretion of management but will not be unreasonably withheld as long as the employee has conformed to the notification requirements and has produced any necessary medical certificates, including self-certificates.

The amount of sick pay the employee may receive will depend on the employee's service with the organisation, as follows.

- In the first six months of employment the employee will not be eligible for pay if off sick, other than SSP.
- From six months to two years' service, the employee may receive two weeks full pay and two weeks half pay in any rolling period of 12 months.
- From two years to five years' service, the employee may receive three weeks full pay and three weeks half pay in any rolling period of 12 months.

With more than five years' service, the employee may receive four weeks full pay and four weeks half pay in any rolling period of 12 months.

Sick pay from the organisation includes any entitlement the employee may have to SSP. Once payment from the organisation ceases, the employee will still be entitled to SSP (for up to 28 weeks sickness in total).

The organisation reserves the right to refuse to pay sick pay (including SSP) if it has reasonable cause to think that the employee is not genuinely sick, or if it has cause to believe that the employee is abusing the sick pay scheme.

Unpaid sickness

Employees who are not eligible for SSP or for payments under the Organisation sick pay scheme will take that period of sickness as unpaid. No variable payments such as commission or bonuses may be paid and no basic pay shall be made.

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Employee's annual leave entitlement will only accrue at their statutory entitlement under the Working Time Regulations 1998, i.e. pro rata up to a total of 28 days per annum. This includes public holidays.

Absences for reasons other than sickness

Long term absences for reasons other than sickness, such as career breaks or time off for long distance travel, will be considered by line managers at the request of an employee. The request will be considered in line with business needs and operational requirements prior to being authorised.

Unauthorised absences will be dealt with via LSC's disciplinary procedure

Protecting the employee's data

All personal data obtained during sickness absence procedures will be handled with the utmost integrity and confidentiality and in line with our data protection policy.

Employees may be reminded of the types of data LSC holds, including data on health, and our practices in relation to that data by reviewing LSC's privacy notice.

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