



Making us Better: Sickness absence agreements - a guide for trade unionists

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Making us Better

**Sickness absence agreements:
A guide for branches and safety
representatives**

June 2007

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Research methods

Much of the research findings presented within this guide are based upon recent research conducted on behalf of UNISON by two industrial relations experts from Bradford University School of Management. The interim report detailing many of these findings can be acquired from UNISON (0845 355 0845); the reference is as follows:

Perrett, R. and Martinez Lucio, M. (2006), *Absence Agreements in the UK Public Sector: A bitter pill to swallow?* UNISON publications.

For more detailed information about the research methods, characteristics of the response rate and the general findings please see the interim report described above.

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The important role played by UNISON branches and safety reps

This guide aims to assist you in your role as a UNISON branch officer or safety rep by highlighting potential areas of concern and offering advice to you when discussing the issue of absence with management. The guide is designed as both a source of information and a general negotiating tool and to encourage you to question what is included within your sickness absence agreements and to understand what management aim to achieve by them. The toolkit highlights how union and management aims may differ in managing absence. It can also help you by providing methods and arguments for gaining better agreements and developing more proactive strategies.

So why is there a need for this guide now? Recent national research conducted by UNISON (in June 2006)¹, incorporating a survey of 834 UNISON safety reps coupled with detailed case studies of specific workplaces and procedures, highlighted some significant points:

- Firstly, sickness and safety in the workplace are clearly linked. So UNISON branches and safety reps should be permitted a say in how

sickness absence is dealt with. However it is not uncommon for employers to exclude UNISON and their safety reps from the development of absence arrangements. This is worrying, as safety reps have the **legal right** to be consulted on anything that could affect the health and safety of the members they represent.

- The presence of an absence agreement at a workplace **does not** always mean that safety reps (or other UNISON officials) are being involved in absence-related issues.
- Co-operation around traditional health and safety matters **did not** mean that there was co-operation around absence provisions.
- Management frequently **over estimated** the level of abuse of the absence provisions and treated absence with **suspicion**.
- Many absence agreements focused on **control and punishment**, rather than rehabilitation and aiding the transition back to work following sickness.



¹Perrett, R. and Martinez Lucio, M. (2006) *Absence Agreements in the UK Public Sector: A bitter pill to swallow?* (Available from UNISON)

In summary, a large proportion of employers are attempting to limit the influence of UNISON and their safety reps in the Absence Management process. Some even try to deny the link between absence and health and safety. Furthermore, many safety reps and union branch officials do not associate the role of safety reps with Absence Management or absence agreements, which is worrying as safety reps possess legal powers not held by other stewards. The Health and Safety Executive (HSE²) has confirmed the link between effective union safety reps and better managed sickness absence. They suggest³ that union safety reps should work with the employer in respect of sickness absence by:

- 1 helping to identify measures to improve the health of workers and to prevent it being made worse by the negative aspects of work
- 2 suggesting that employers develop workplace plans and policies on Sickness Absence Management
- 3 helping to keep workers who are on sick leave in touch with work
- 4 helping employers to plan adjustments that will enable sick workers to return to work
- 5 supporting sick workers in a more proactive manner to help them to return to work
- 6 helping to promote understanding of disability and health conditions in the workplace.

This guide confirms the **important role** that safety reps can play in the process of Absence Management and that, **with branch support**, they can play an active role in improving and developing absence agreements that focus on employee rehabilitation. Furthermore, the information given to safety reps in this guide will give them greater confidence to raise concerns with management when an agreement is unfair or is a blatant attempt to penalise workers by, for example, forcing them back to work before they are fit to do so.

²The government organisation responsible for health and safety issues in the workplace.

³*Working Together to Prevent Sickness Absence becoming Job Loss: Practical advice for safety and other trade union representatives* (2004) **Health and Safety Executive**

Why this guide can be of use to you

Recent research by management orientated organisations (see for example the CBI⁴ and CIPD⁵), and media attention claims that public sector workers are taking considerably more time off work sick than those within the private sector. However, the government organisation responsible for health and safety issues in the workplace (the Health and Safety Executive – HSE⁶) shows that such findings are misleading. Especially when issues such as the size of public sector organisations and the age and gender of the workforce are taken into consideration, the difference between public and private sickness absence rates are relatively small (an average of just 0.3 days per employee).

Despite this, there is growing pressure within the public sector to reduce costs and improve efficiency, increasingly resulting in management trying to introduce more **stringent absence provisions** into absence agreements. The government are pushing for efficiency and savings in the public sector and absence, quite unfairly, has become the focus of their attention⁷.

No one is saying that an organisation, public or private, should not have provisions in place to prevent or reduce unauthorised or dishonest time-off for sickness, or to hamper their ability to encourage health within the workplace. What is of **concern to UNISON** is how managers go about this and the aims they have when incorporating provisions into an absence agreement. This guide aims to assist you in your role as a safety rep by highlighting potential areas of concern and offering advice to assist you when discussing absence with management.

What is a sickness absence agreement anyway?

So what is a sickness absence agreement (sometimes called an attendance agreement) and why is it important? An absence agreement really is just as it sounds, an agreement between UNISON and your employer detailing how the absence of employees in your workplace is managed. There is no such thing as a 'model agreement' as circumstances can differ considerably between

different organisations. Typically managers will develop absence procedures which are incorporated into your agreement; these could be quite **open and simple, or very rigid and complex**. As you might expect, absence agreements can cover a range of areas such as: how employees report their absence, sick pay levels, employee legal rights, the procedures that managers should pursue when dealing with absence, how to deal with unauthorised absence, and how records of absence should be kept and what they can and **can not** be used for. Absence agreements also cover trade union involvement and rights, for example: when discussions about updating procedures should be held, the role of the health and safety committee (if one exists), the role of safety reps in providing support and advice, union rights to accompany an individual (if their attendance is in question by management). Often, simple **procedural issues** like those highlighted above are all management want to include in an absence agreement – procedures that can potentially be **misused** to hurry employees back to work before they are ready or to punish them for being off sick. What is more important are issues relating to the welfare of the employee, prevention of sickness in the first place, rehabilitating sick workers and providing support for employees' transition back to work. As such methods, and a commitment to identifying the causes of sickness absence should be included within your absence agreement, as well as the manner in which employees are managed and **supported** in the workplace, once they have returned to work. Furthermore long term approaches relating to how you and management can address the health needs of the workforce should be developed.

Often people forget about the **'health'** in health and safety – this needs to change as **poor health can have serious repercussions on safety** in the workplace. Your position as a UNISON branch officer or safety rep means that you need to play a role in developing your sickness absence agreement and this should be focused upon the welfare of the workforce rather than punishment and control.

What this guide includes and how you should use it

As described in the introduction, this guide aims to assist you in your role as a UNISON branch officer or safety rep by highlighting potential areas of concern and offering advice to you when discussing absence with management. It acts both as a source of information and a general negotiating tool and is designed to encourage you to question what is included within your sickness absence agreements and to understand what management aim to achieve by them.

A large scale national UNISON survey and a number of subsequent case studies (detailed studies of specific workplaces and procedures) has resulted in safety reps, highlighting some **areas of concern**. These focused: on what their role should be when it comes to sickness absence agreements, what they should include in agreements, and what reps should be campaigning for from management.

By talking to a large number of UNISON safety reps across the country, **five broad themes** have emerged as important areas that need to be included in any absence agreement. These areas require special attention by the safety rep, if you are to help create a fairer workplace, one where employees are not forced back to work before they are fully recovered, or punished for being ill.

These five themes are laid out on the table over the page.

⁴Confederation of British Industry (umbrella organisation for employers associations in the UK)

⁵The Chartered Institute of Personnel and Development (organisation for HR professionals)

⁶Survey of Workplace Sickness Absence and Health (SWASH)

⁷See 2004 Government report entitled *Managing Sickness Absence in the Public Sector*

Broad themes raised by UNISON safety reps

Themes requiring special attention by UNISON safety reps	Description
1 Monitoring and absence figures	Are figures relating to occurrences and the reasons for absence collected? What are they used for and why should safety reps request a copy?
2 Exemption from absence procedures	Absence agreements should make it clear that under certain circumstances workers will be exempt from the absence procedures.
3 Return to work provisions – punishment or rehabilitation?	When returning to work many employees need support and rehabilitation, not punishment and recrimination.
4 Management competency and discretion	Management need consistent training to exercise discretion in a manner that does not warrant favouritism or victimisation. UNISON involvement could ensure this.
5 Contact, counselling and occupational health	Contact with sick workers is important but should not be used to intimidate. Occupational health services should be available, accessible, confidential and independent of management.

In the following pages each of the five themes are addressed in turn. Each begins with a 'quote' from interviews with individual safety reps to help explain what the difficulties are. This is followed by a short paragraph documenting some of the main findings from the national survey of UNISON branches and safety reps that relate to that particular topic. The guide then explains why the topic should be of particular importance to you in your role; it highlights what management's aims might be and why you should be trying to make changes. Finally within each of the five themed sections a **'Branch and Safety Rep Checklist'** is presented. This summarises the five key points and gives recommendations for you to implement. There are five 'Branch and safety rep checklists' in total, one for each section.

Pages 22 to 26 outline a practical section entitled: **Branch and safety reps guide to negotiation.** This has been designed as a quick reference guide

that presents practical information and directs you to other resources that might be of use to you. This practical section includes the following:

- 1 Broad recommendations as to **where to start** and how you should progress, when approaching management about absence arrangements.
- 2 A list of bullet points that you can present to management. To convince them that having a well thought out and fair absence agreement can generate **positive outcomes** for them as well as staff.
- 3 A list and summary of some of the laws relating to employees rights
- 4 A list of informative and useful web pages
- 5 A list of more detailed useful documents
- 6 A training workshop schedule

7 The 25 main recommendations presented throughout the report (five recommendations for each of the five themed sections) are summarised in a table; this is presented on **page 26 for you to photocopy and keep** and use it as a guide when discussing your absence agreement with management.

This guide has been designed as a tool to help you develop in your role as a UNISON safety rep and to offer advice and point you in the right direction when you need information. However, if you are experiencing difficulties or need further expertise, **don't suffer in silence**, go to your branch and they will advise you accordingly.

IF IN DOUBT, SHOUT!



1 Monitoring and absence figures

“I can see why collecting absence figures is necessary, it can identify groups of workers who are more likely to get ill because of their work, for example community probation officers, as a result of their continued contact with the public... What we don't need is management using these to penalise or reprimand us!”

Probation Officer – Yorkshire and the Humber

Research findings – What's the current situation?

Over 90% of safety reps who participated in the UNISON survey believed that their employer **did keep records** on incidents and reasons for absence. However, **just one in five** claimed that such absence figures were provided to them. Irrespective of whether this was because management refused to pass on this information, or because safety reps had simply not asked for it, these findings suggest that not enough safety reps have access to these figures and so are allowing management to use them unchecked. Furthermore, almost half of all safety reps believed that management over-estimated the level of misuse of sick leave provisions, and similarly around half believed that employees with genuine illnesses were being penalised because of the absence provisions. **If you can not see the absence figures how can you dispute management's claims?**

Addressing the important issues

Monitoring and recording levels and reasons for absence can be used in a positive way; for example, they can help to identify accidents and ill-health caused by work. By breaking down and correlating absence statistics – for example: by department, grade, type of shift, and gender – trends can be identified to help focus and prioritise risk assessments and health promotions in the workplace. It is essential therefore that an absence agreement clearly states the **objectives for monitoring absence** and how management will use these figures in respect of individual employees, departments and the organisation as a whole. Safety reps should request these figures

and any analyses that might have been undertaken, and to challenge management if they are unhappy as to why or how these figures are being used – particularly if they are likely to affect future absence policy. **Remember** safety reps have a legal right to be consulted by management under the Safety Representatives and Safety Committees Regulations 1977.

Management should be challenged if absence figures are being used as a means of **controlling or intimidating employees** either to prevent them taking time off when they are genuinely ill, or forcing them back to work before they are fully recovered. Management can abuse financial incentives, linked to team or departmental attendance, or rigorously enforce targets. This could result in **hindering full recovery**, affecting other employees, increased pressure from colleagues or workplace bullying, increased stress, and even lower moral and productivity.

You might find that an absence provision or agreement already sets out subjective attendance targets, some of which could potentially be discriminatory; others might fail to take into account the composition of the workforce or the nature of the work being undertaken. If management are still adamant that they want to use attendance targets the safety rep must ensure, as far as is possible, that they are **fair, achievable and are not set with the sole intention of discouraging legitimate absence**. Where management's intention is to use absence figures to discourage legitimate absence, an employee's recovery can be prolonged and could lead to them infecting other staff members. While sick staff may be at work, morale and productivity may be lowered.

Targets should be consistent across the workforce as a whole but a degree of discretion should be incorporated⁸ as rigorously enforcing, crude targets and trigger points will inevitably force ill employees to return to work before they have fully recovered and can penalise workers who might have, in the past, had a long and exemplary attendance record. Furthermore, the period over which absence figures are collated should be long enough to make statistics meaningful, anything less than a year can distort figures and is not acceptable.

Branch and safety rep checklist 1

- 1 Branch officers and safety representatives must have access to absence figures and should be consulted on how they are being used. It is up to the branch officer or safety rep to request these. Not providing them will weaken the employers' argument as they will be seen as unco-operative or short term in their approach. They will also be breaching your rights to consultation under the Safety Representatives and Safety Committees' Regulations (1977).
- 2 If you are not happy with anything in the policy relating to absence monitoring. Or how management are using the figures, it is your right and role to raise this with management.
- 3 Financial incentives linked to individual, team or departmental attendance should be discouraged. They trivialise illness, encourage members to come into work when they are ill, and undermine a more thoughtful approach.
- 4 Setting of stringent targets is to be discouraged. Where targets are already in place they should be reasonable, well publicised and a level of discretion, without favouritism, should be included.
- 5 If targets are set by management, the reference period should be no less than 12 months to avoid misrepresentation.



⁸The issue of discretion will be discussed in more detail in the section entitled: Management competency and discretion

2 Exemption from absence procedures

“Overall the Council is good when it comes to pregnancy issues and staff with disabilities... the problems emerge, when you get rogue managers, in out of the way departments, who are stuck in their ways and frown upon absence under any circumstances.”

Council employee – The North West

Research findings – What's the current situation?

Around nine out of ten safety reps who participated in the UNISON survey stated that special consideration was given in the case of maternity or paternity absence. Over 90% of safety reps claimed that exemption from absence procedures was given in respect of compassionate leave for personal or family reasons, and six out of ten believed that special consideration was given with regards to child care needs and carers leave. In respect of disability, just two-thirds claimed that special consideration or dispensation was given when it resulted in absence; around one in ten stated that special consideration was not given and, perhaps, most worrying, was that **a quarter of safety reps** did not know. Just two out of every ten safety reps believed that special consideration was given in respect of extended holidays for religious reasons. **It is important that you know what is incorporated within your agreement – you must know what your current position is to be able to negotiate better procedures.**

Addressing the important issues

UNISON are concerned about situations where individuals should be exempt from the formal absence procedure as a result of legislation, but management are unaware of this or do not comply with the legislation.

Maternity and paternity leave is compulsory, and is enshrined in UK employment legislation. Absence due to pregnancy, including antenatal appointments, should not be penalised. Under the Trade Union Reform and Employment Rights Acts 1993, dismissal for any reason connected with pregnancy constitutes **unfair dismissal**.

Employers have a considerable amount of discretion in connection with the provision and arrangements for employees wishing to secure time-off on compassionate grounds. Similarly, the legislation surrounding issues of absence caused by child care needs or carers leave are open to employer discretion. The Employment Rights Act 1996 gives an employee the right to time off for dependants; however the legislation focuses mainly upon time-off to deal with emergencies. Such needs should be treated sympathetically by the employer though, as this would encourage staff to be more open with them. UNISON safety reps should aim to go beyond this so that a specific number of days are included in the policy to deal with this type of leave. You should present similar arguments to management when developing your absence agreement.

An employer must not discriminate against an employee who becomes disabled, or has a disability that worsens. Such absence should not be subject to the normal absence procedures and this should be made clear in the absence agreement. If sickness absence is related to a disability, the employer has a duty under the Disability Discrimination Act (DDA) 1995 to make reasonable adjustments. The Employment Equality (Religion or Belief) Regulations 2003 make it illegal to discriminate in matters of employment on the grounds of religion or similar beliefs. Furthermore, staff may request that annual leave and rest breaks coincide with festivals and prayer times respectively. An employer may justify a refusal only where these conflict with the legitimate business needs of the organisation. However, under such circumstances, it would be appropriate for management to accommodate such absences as part of the business case for managing diversity in the

workplace. Safety reps should ensure that issues relating to religious leave, particularly extended leave for religious purposes, are raised in sickness absence discussions. Where an issue is not specifically covered by the law, you can however emphasise to management that there is a **good 'business case' for them to compromise**, particularly when their refusal could potentially be discriminatory.

Branch and safety rep checklist 2

- 1** Absence relating to **injury in the workplace or ill health caused by work** should not be subject to normal absence procedures. This is an area where employers need to be made aware of their responsibilities. Furthermore, where an employee has already been harmed they should not be made to suffer further.
- 2** **Maternity or paternity** absence should be excluded from sickness absence procedures. This is enforceable by law and should be stipulated in any agreement in a clear and rigorous manner.
- 3** Absence relating to **disability** should be excluded from sickness absence procedures. This is enforceable by law, and should be spelt out in any agreement.
- 4** Special provisions for absence for **religious purposes** should be included in the agreement. Management should be informed that this can contribute towards their diversity or equal opportunities policies particularly, since the introduction of the Race Relations (Amendment) Act 2000.
- 5** Special provisions should be permitted for **compassionate leave** and assistance given for child care and carer responsibilities. Again, there is a good business case for such policies as well as equal opportunities issues. Care is now being recognised as an important feature of individual activity so agreements should note this in positive terms.



3 Return to work provisions: Punishment or rehabilitation?

According to the HSE⁹:

“Under the Health and Safety at Work etc Act 1974 and related legislation, employers are required to protect the health, safety and welfare of their employees. This includes taking action to protect the health and well-being of employees after they return to work, if they have become more vulnerable to risk because of illness, injury or disability”.

Research findings – What’s the current situation?

The large majority of safety reps who participated in the UNISON survey indicated that their workplace employed some form of return to work procedures. It was unclear as to whether management used these as a genuine attempt to support and aid the transition back to work or as a form of **intimidation and control**. Nine out of ten safety reps claimed that a return to work interview was required following absence within their workplace. Three-quarters stated that ‘rehabilitation’ provisions were in place to aid a return to work. Seven out of ten claimed that follow-up meetings were arranged to discuss and monitor employee improvements. Six out of ten claimed that time limits were set for employees to make improvements (just 15% claimed that they did not). **What you should be asking yourself is what management’s intention is?** Helping workers recover from an illness or forcing them back to work before they are fully recovered?

Addressing the important issues

As highlighted throughout this guide, the main purpose of absence provisions included within an absence agreement should be to promote employee **welfare and rehabilitation** rather than merely punishing individuals or forcing them back to work before they are fully recovered. Management should not assume that all employees want to abuse sickness procedures or imply that no one is justified in being ill, and the agreement should reflect these views. As a safety rep you will be in a better position than management to identify employees’ needs and so should be **involved with management in developing non-disciplinary**

assistance, support and counselling for employees’ to return to work. Counselling is becoming a source of interest amongst personnel managers and you should tap into this trend and use it to the advantage of the workforce rather than allowing management to use it as a policing mechanism.

However, where absence is due to work related injury or ill health, counselling will not help if the risk of such remains. The absence policy should make it clear that a review of the relevant risk assessment will be made following such absences.

It is a good idea, and indeed recommended by the HSE, that a **‘return to work plan’** on an individual basis, as circumstances differ between employees, is written and that the **safety rep should play a key role in its development**. Many procedures already in operation might involve individual employees, for example return to work interviews, and may result in individuals feeling intimidated by managers. It is therefore essential that stewards or safety reps are allowed to represent members throughout this process. Rehabilitation programmes can be the most efficient way of reducing sickness absence and ensuring good attendance levels.

Barriers at work that prevent or delay a return can be overcome by simple adjustments, eg altering working arrangements or the workplace environment, shorter or flexible working hours, redeployment with training as required, modifying workstations or providing different equipment. Giving support and making adjustments within a well structured return to work plan is more likely to result in job satisfaction, an earlier return and less likely to result in an illness reoccurring. This support should be highlighted to management and should be reflected in the development of agreements.

Branch and safety rep checklist 3

- 1 Ensure that sick employees are not being intimidated by management or forced back to work before they are **fully recovered**. This is likely to result in ongoing illness, low morale and, in some cases, the spread of infection. Ensure that risk assessments are undertaken.
- 2 It must not be assumed that employees are abusing absence provisions, particularly in respect of short term absence. Return to work procedures should be based upon **rehabilitation rather than punishment**. The language of punishment should be challenged.
- 3 Employees must be allowed **union representation**. As a safety rep you have the right to be consulted on anything that could be seen to affect the health and safety of the members you represent.
- 4 Work with management to write a **return to work plan**. Consult the member concerned to make sure they are happy with these provisions.
- 5 **Highlight to management** that the most effective way of reducing absence and encouraging a speedy return to work is through rehabilitation, which does not have to be expensive and could simply incorporate subtle changes to the work environment, type of work and hours undertaken. Be proactive and update yourself on good practice in health and safety issues: you will not only **win arguments** you will highlight UNISON in a good light.



⁹Working together to prevent sickness absence becoming job loss: Practical advice for safety and other trade union representatives (2004) **Health and Safety Executive**.

4 Management competency and discretion

Management competency and the level of discretion they use throughout absence provisions were not specifically addressed by the UNISON survey. However, they arose frequently as a key area of concern by safety reps in the detailed case studies. The quotes below from two different workplaces highlight the dilemma facing safety reps in respect of the level of discretion possessed by managers.

Research findings – What's the current situation?

SITUATION 1

"We had this new guy start in personnel. He was obsessed with procedures and targets ... anyway, one of the old guys had a bad run of events: illness, family problems you name it, and he was put on stage one [absence procedure] ... after 30 years service that's not how you treat someone!"

Fire service – The Midlands

SITUATION 2

"If you're a blue eyed boy, or in management's pocket, they'll give you the benefit of the doubt ... if you stand up to them, or they just don't like you, then you really have to watch yourself."

Police staff – The North West

Addressing the important issues

As highlighted earlier within this guide, absence provisions, in theory, should operate consistently across the workforce. However, it is obvious that individual circumstances of absence differ between cases, suggesting that **a degree of discretion should be applied**. However, such discretion can result in inconsistency, favouritism, victimisation, varying treatment by different managers and lead to a lack of clarity and to some confusion. It could be particularly difficult to exercise discretion where stringent targets and/or trigger levels are incorporated within a procedure, and so a situation

may arise where an employee with a ten-year exemplary attendance record may be penalised following a short period of absence.

There are no hard and fast answers to this dilemma, but it is your role as a safety rep to **try and achieve a balance** between excessively rigid policies and management abuse of discretion. Training on how they may use their discretion should be provided to managers (by human resources or the training department) and this should be consistent across managers and departments. Ask human resources if you can also participate in the training, this way you will be aware of the actions managers are likely to take. It is important for managers to listen to the views of safety reps when exercising discretion, not only as they can advise how not to contravene discrimination legislation, but they might also prevent heightened bad feeling within the workplace.

Branch and safety rep checklist 4

- 1 Absence procedures and agreements should not be too rigid. The use of targets and triggers should be discouraged: but where they are present they should be carefully implemented and it should be clear how they will be used.
- 2 Where discretion is used, safety reps should always be consulted. As a UNISON safety representative you have a right to discuss issues relating to the health of your members with management. Use your branch for support if required.
- 3 You should request absence figures that have been collected by human resources, make sure you also get management absence figures. Do they practice what they preach? Are management using discretion for themselves and not others?
- 4 Managers should receive training in how and when to use discretion. This should be consistent across managers and departments – request that you are given such training as well.
- 5 Time-off for safety reps to attend UNISON and/or TUC run sickness absence courses should be permitted. This should be specified in the absence agreement. Also be proactive, ask your regional officer to find other good agreements on the Bargaining Information System and ask if such procedures can be put in place at your workplace.



5 Contact, counselling and occupational health

“I’ve no doubt whatsoever that occupational health could benefit workers tremendously and help them get back into work ... the problem is you just don’t know where their loyalties lie. Do they go running straight to management after they’ve talked to you?”

Council employee – London Borough

Research findings – What’s the current situation?

Occupational health schemes can have a major effect in preventing ill health through work and in ensuring that employees are able to return to work. Seven out of ten safety reps who participated in the UNISON survey reported that their workplace provided an internal occupational health service. Just over half stated that an **external occupational health** service was provided for employees. External occupational health services are often deemed to be important to employees who may not wish to discuss personal issue or ailments with others employed within their organisation (particularly not line managers). Just 39% of respondents claimed that **same sex interviews** (following absence) were offered in respect of sensitive issues. Despite this, 70% of respondents claimed that a confidential counselling service was provided. However, it was unclear whether this was any different from the regular occupational health service. It is important for you to **build a good relationship** with your occupational health officer as they might have more influence than you over Human Resources or line managers’ views. Occupational health could help convince managers that a worker is genuinely ill and should not be hurried back to work.

Addressing the important issues

When discussing sickness absence some or all of the following might sometimes be required: medical information, counselling services and contact with sick employees at home. As highlighted throughout this guide, this can be undertaken positively to **aid an employee** who is absent from work; or negatively to pressurise sick employees back to

work, or to limit future sickness absence through **threats and subtle intimidation**.

Requesting a **medical certificate** when an employee has had less than one week’s absence is unreasonable and potentially costly; many GPs charge for certificates for such short periods of absence. Management might argue that longer spells of absence warrants regular contact with absent workers and potentially a home visit. This can be a touchy subject as intrusive telephone calls and home visits can be intimidating for workers. Management has **no right** to visit an employee at their home so this can only be undertaken with the express consent of the employee and with a very good reason. On the other hand, regular contact can make absent employees feel valued by the organisation and can allow a discussion to develop with management about return to work adjustments or a rehabilitation plan. The role of the safety rep therefore is to assess the individual circumstances of each case and **discuss with management** the best course of action. Safeguards should be in place to ensure against employees feeling intimidated in their own homes and management should consider allowing **someone other than a line manager, such as occupational health or a safety rep**, to maintain contact or undertake home visits. However, the development of call centres that monitor absent staff is an increasing problem and you should become familiar with how these are used and how absence agreements can attempt to ensure they are not intrusive or unfair. There have been complaints recently that such call centres are using bullying tactics to force sick employees back to work.

The use of occupational health departments has grown considerably in recent years, a development which, if not misused by management, should be

welcomed. The expertise and counselling services they can provide are invaluable in aiding employees back to work following a spell of illness and in addressing the welfare needs of employees in the workplace. It is essential therefore, that occupational health departments are not seen to be places that give management justification for distributing warnings or punishments following absence. If possible, an absence agreement must therefore say that occupational health services are independent of management and especially **independent of disciplinary procedures**.

Separate guidance on occupational health schemes is available from UNISON’s website.

Branch and safety rep checklist 5

- 1 Medical certificates should only be required after a **full week** of absence. Anything below this can be unreasonable and costly.
- 2 To **avoid intimidation** at home the branch officer or safety rep should advise management on how best to maintain contact with absent workers. Home visits, for which there is no legal right, should only be considered with full consent from the employee and should not be undertaken by line managers. If necessary, suggest someone from occupational health or HR does it, accompanied by a UNISON representative.
- 3 **Contact** with an absent employee should focus on rehabilitation and return to work requirements. Forcing an early return is only likely to worsen any medical condition.
- 4 **Occupational health** services should be used to aid the transition back to work not to justify punishments. Management should not ‘lean on’ occupational health professionals to provide such a service. The ‘independence’ of these services should be a major concern for safety reps, and you should try to build a positive relationship with them.
- 5 It is a good idea to utilise the **expertise** of the occupational health department when developing return to work and rehabilitation plans. You must maintain contact with them to make sure management aren’t putting pressure on them to penalise workers unduly. Furthermore, if you are working with occupational health to write return to work or rehabilitation plans – this is a job management don’t have to do. You are saving them work, so **sell it to management this way**.

Branch and safety reps guide to negotiation

So what have you learnt and how do you progress from here?

- 1 The job of a safety rep is not just to stop accidents happening in the workplace, you can also have a really positive effect on how sickness absence is dealt with and make your workplace a fairer place to be.
- 2 As a safety rep you have the legal right to be consulted on issues that affect the safety of the workforce – Sick employees affect the safety of the workforce. **Don't be confrontational** but let management know that you want to play a greater role in deciding how sickness absence is managed at your workplace.
- 3 Managing sickness absence and drawing up an absence agreement could include a lot of different topics, some of which management might use to hurry employees back to work before they are fully fit. Don't let them 'pull the wool over your eyes', read up about sickness provisions in the material listed at the end of this guide, or ask your branch to explain them in more detail. Then you can go back to management and argue for change with confidence. If no one confronts them, nothing will change.
- 4 Different managers have different relationships with trade unions, some good, some bad; however there are some topics where managers and union representatives, such as yourself, can work together well. Managing sickness absence is one of these topics. Managers want a fit and healthy workforce who are productive and can do their jobs well. UNISON wants its members to be **treated fairly**, to be given the chance to recover fully before returning to work and not to be punished for being ill. Irrespective of other disagreements between UNISON and your employer, there is plenty of room for working co-operatively with managers when it comes to sickness absence. It is up to you to approach the relevant managers and develop a relationship with them. Over time you will become more influential and management will take your suggestions or complaints seriously.
- 5 Fifth, if managers need convincing as to why they should improve the absence agreement,

remind them that good sickness absence management and a good agreement has a large number of benefits for them. Just some of these benefits are listed below. Type this list out and present it to your human resources or occupational health departments – **they will probably agree with you** but express concern about abuses to the system. Tell them that you are prepared to work with them on this but that all employees should not be penalised for the actions of a few!

Benefits for employers include:

- Being seen as a good and caring employer
- Employees would be happier in their work
- Staff would **view their employer as fair** and so be more willing to communicate their difficulties and reasons for absence
- It can create benefits in terms of recruiting and retaining staff (removing associated costs)
- It can lead to a more healthy and so **more productive** workforce
- Some aspects of a good absence agreement, particularly relating to issues such as ethnicity, religion, gender, pregnancy, disability, and health concerns and age can form part of an employers' equal opportunities or **diversity policies** – it is vital that an employer has such policies in place and safety reps can help in their development
- It will help contribute to a workplace culture where illness is not linked to harassment
- Allowing the safety rep to become more involved removes some of the **pressure from managers** – Usually safety reps are closer than managers to employees and so can paint a well rounded picture of health concerns on the shop floor
- It will avoid tensions within the workplace relating to the treatment of colleagues or team members
- It will help employers avoid cases of discrimination, or legal challenges from employees and the potentially embarrassing headlines and media attention that are often associated with these.

What resources can help you?

Change doesn't happen over night and you might need support and guidance along the way. This guide has been designed to direct you towards helpful resources (detailed below) however please remember that UNISON has a wealth of experience and **many structures to help you**. If you are unsure of anything or need clarification, in the first instance, contact your branch and they will either provide the information, call on the expertise of regional officials or direct you to other avenues of support and guidance. However, there is a great deal of information available that you can **access on your own**, but please liaise closely with your branch officials **before agreeing to any changes** to policy with management as they can ensure that they conform to UNISON guidelines. Presented below is some practical information you might find of use as well as guidance for other resources. These are as follows:

- A** A list and summary of some of the relevant legislation that contributes to employees rights is presented on page 20.
- B** A list of informative and useful web pages is presented on page 23
- C** A list of more detailed documents is presented on page 24. Many of these are available on the internet.
- D** More for branch officials than for you, a schedule for training workshops is also presented for future training events on page 25.
- E** Page 26 is designed to be photocopied. It highlights in a table the 25 main recommendations made within this guide (divided into five sections). **Photocopy this** and use it as a guide when discussing with management what to include in the agreement. These are recommendations so use your discretion depending upon how management reacts.

Don't forget that you can also type out page 18 to illustrate to management that good absence provisions generate positive outcomes for the organisation.

Remember, if you are unsure about anything or require support just ask your branch.



A Summary of relevant legislation

Highlighted below is a list and short summary of some of the relevant legislation that contributes to employees' rights at work and cover some aspects of absence. More detailed summary information or the Acts themselves can be downloaded from the internet. Relevant internet addresses are provided below.

Health and Safety at Work etc Act (1974)

This Act sets out the general duties which employers' have towards employees and members of the public, and employees have to themselves and to each other. The Act makes provision for securing the health, safety and welfare of persons at work, for protecting others against risks to health or safety in connection with the activities of persons at work.

Summary and the full Act is available from the HSE at the address below:

www.hse.gov.uk/legislation/hswa.htm

Management of Health and Safety at Work Regulations (1999)

These regulations more explicitly set out what employers are required to do to manage health and safety under the Health and Safety at Work Act. They apply to every work activity. The main requirement on employers is to carry out a risk assessment. Employers with five or more employees need to record the significant findings of the risk assessment.

A short HSE guide:

www.hse.gov.uk/pubns/hsc13.pdf

Full Act:

www.opsi.gov.uk/SI/si1999/19993242.htm

Safety Representatives and Safety Committees Regulations (1977) and the Health and Safety (Consultation with Employees) Regulations (1996).

If an employer recognises a trade union and that trade union has appointed, or is about to appoint, safety representatives under these regulations, then the employer must consult those safety representatives on matters affecting the group or groups of employees they represent. Members of these groups of employees may include people who are not members of that trade union.

UNISON guide:

www.unison.org.uk/acrobat/11191.pdf

HSE guide:

www.hse.gov.uk/pubns/indg232.pdf

Full Act:

www.opsi.gov.uk/SI/si1996/Uksi_19961513_en_1.htm

Disability Discrimination Act (1995 and 2005)

Employers are required to make reasonable adjustments to the workplace or employment arrangements so that a disabled person is not at any substantial disadvantage compared to someone who is not disabled.

A useful summary can be acquired from the government's general information web page. Go to the home page (address given below) and type in 'Disability Discrimination' in the search area.

www.direct.gov.uk

Full Act:

www.opsi.gov.uk/acts/acts2005/20050013.htm

The Employment Rights Act (1996)

This Act requires that certain terms and conditions must be set out in a single document – this can be a written "contract of employment" or a "statement of the main terms and conditions of employment". The written terms and conditions will contain both contractual and statutory rights, that is, both those protected by law and those negotiated directly between the employer and the employee or representative.

Terms relating to sickness, notification of sickness, pay relating to this period and rules relating to statutory sick pay are classed as an obligatory inclusion. Alternatively, the employee may be referred to another document where these terms are set out, provided that the document is readily accessible – a sickness absence agreement for example.

The National Council for Voluntary Organisations (NCVO) gives useful summaries on many aspects of the law. Address given below:

www.ncvo-vol.org.uk

Full Act:

www.opsi.gov.uk/acts/acts1996/1996018.htm

The Employment Act (2002)

This Act gives a new right to time off work for union learning representatives. Other wide ranging issues include, covering work and parents, dispute resolution in the workplace, improvements to employment tribunal procedures, including the introduction of an equal pay questionnaire, provisions to implement the Fixed Term Work Directive, work focused interviews for partners of people receiving working-age benefits and some data sharing provisions.

The Department of Trade and Industry provides a useful summary. See their employment web site (given below) for details. There is a search option on the site to search for specific issues.

www.dti.gov.uk/employment

Full Act:

www.opsi.gov.uk/acts/acts2002/20020022.htm

The Access to Medical Reports Act (1988)

Under this Act an employer must seek consent in writing from an employee before requesting a report of their medical record.

An employee is entitled to refuse permission to allow an employer to apply to their doctor for a medical report, and to have access to their medical report before it is passed to an employer. The employee can withhold consent to the medical report being supplied to the employer.

The National Council for Voluntary Organisations gives a useful summary:

www.ncvo-vol.org.uk

Full Act:

www.opsi.gov.uk/acts/acts1988/Ukpga_19880028_en_1.htm

The Data Protection Act (1998)

Under this Act, workers have the right to be told about, and to demand a copy of, information which is held about them on their employers' computer systems. The 1998 Act extends this right to information which is recorded as part of a "relevant filing system".

Full Act:

www.opsi.gov.uk/acts/acts1998/19980029.htm

Race Relations (Amendment) Act (2000)

This Act places a general duty on a wide range of public bodies to promote race equality. This duty means that public organisations must have due regard to the need to eliminate unlawful racial discrimination, promote equality of opportunity, and promote good relations between people of different racial groups.

The Commission for Racial Equality (CRE) Statutory Code of Practice on the Duty to Promote Race Equality can be found at the following address.

www.cre.gov.uk/downloads/duty_code.pdf

Full Act:

www.opsi.gov.uk/ACTS/acts2000/20000034.htm

The Employment Equality (Religion or Belief) Regulations (2003)

These regulations make it unlawful on the grounds of religion or belief to discriminate directly against anyone; that is to treat them less favourably than others because of their religion or belief. Furthermore, it makes it unlawful on the grounds of religion or belief to discriminate indirectly against anyone. That is, to apply a criterion, provision or practice which disadvantages people of a particular religion or belief.

ACAS – An Employer and Employees Guide: Religion or Belief and the Workplace can be found at the address below:

www.acas.org.uk/media/pdf/ff/l/religion_1.pdf

Full Act:

www.opsi.gov.uk/si/si2003/20031660.htm

Please also note, similar information relating to **other employment issues** such as the working time directive, shift work and night work, workplace bullying, harassment in the workplace and childcare can also be found on the UNISON website on both the Health and Safety and Bargaining Support pages. If you need to find such guidance and are having difficulties locating relevant documents, please contact your branch who will **point you in the right direction**.

B List of useful web pages

Useful web pages are detailed below. In the first instance check UNISON's web page for specific guidelines on the topic of concern to you. Summaries of the legislation, more detailed government guidelines and other topics of interest can be found at the other addresses given. Don't forget, if there is something you don't understand check with your branch, they will be there to help you.

UNISON	www.unison.org.uk
Health and Safety	www.unison.org.uk/safety
Bargaining Support	www.unison.org.uk/bargaining
Trades Union Congress	www.tuc.org.uk
Health and Safety Executive (HSE)	www.hse.gov.uk
Disability Rights Commission	www.drc-gb.org
Hazards magazine	www.hazards.org
NHS Plus (occupational health services)	www.nhsplus.nhs.uk
ACAS	www.acas.org.uk
Department for Work and Pensions (DWP)	www.dwp.gov.uk
Department of Trade and Industry (DTI)	www.dti.gov.uk

C List of helpful and interesting documents

The documents highlighted below may be of interest and assist you in your role as a UNISON safety rep. Many of these documents are available free on the internet; simply type the title into a search engine and you should be able to download a copy. UNISON has published detailed guidelines for branches, stewards and safety representatives on stress, violence, bullying and harassment, occupational health services, and the health and safety six pack, these guidelines are accessible via the UNISON health and safety web page: www.unison.org.uk/safety

The Bargaining Support Group provides factsheets and bargaining guides on a wide range of employment issues. Details of agreements are collected and held in the Bargaining Information System. All Bargaining Support material can be found on the Bargaining Zone: www.unison.org.uk/bargaining

UNISON advice and guidance

A Fair Deal for Disabled Members: Negotiating guide for health and local government service groups, UNISON publications.

A Heavy Load: Stress in manual workers, UNISON publications.

Absence Agreements in the UK Public Sector: A bitter pill to swallow? (2006), Perrett, R. and Martinez Lucio, M. UNISON publications.

Bullying at Work: Guidelines for UNISON branches, stewards and safety representatives, UNISON publications, Stock no.1281.

Control or Management? Guidelines on absence policies for UNISON branches, stewards and safety representatives, UNISON publications, available on www.unison.org.uk/safety

Harassment – A UNISON Guide to Policy and Representation, UNISON publications.

Negotiating on Shiftwork: a UNISON Bargaining Support Guide, UNISON publications, Stock no. 2131.

Negotiating Parental Leave: UNISON guide on parental rights, UNISON publications, Stock no, 1759.

Negotiating to End Disability Discrimination, UNISON publications, available on the Bargaining Zone: www.unison.org.uk/bargaining

Negotiating Time-off for Dependents, UNISON publications, Stock no. 1795.

Safety Representatives and Safety Committees, (2000). Ref 4607, (Brown Book) UNISON publications, Stock no. 1819.

Time to Act: branch guidance, UNISON publications, Stock no. 2359.

TUC advice and guidance

Keeping Well at Work: A TUC Guide (2004), Trades Union Congress (TUC).

Rehabilitation and Retention: What Works is What Matters, (2002), Trades Union Congress (TUC).

Restoring Health, Returning to Work: Getting Britain Back to Work, (2001), Trades Union Congress (TUC).

Sicknote Britain? Countering an urban legend, (2005), Trades Union Congress (TUC).

Miscellaneous advice and guidance

Absence Management: A survey of policy and practice, (2005), Chartered Institute of Personnel Development (CIPD).

Health and Safety Statistics 2005/6, (2006), Health and Safety Executive (ONS).

Managing Sickness Absence and Return to Work: An employers' and managers' guide, (2004), Health and Safety Executive.

Managing Sickness Absence and Return to Work in Small Businesses, (2004), Health and Safety Executive.

Managing Sickness Absence in the Public Sector: A joint review by the Ministerial Task Force for Health, Safety and Productivity and the Cabinet Office, Cabinet Office, DWP, HSE

Off Work, Sick and Worried about your job? Steps you can take to help your return to work Leaflet, (2004), Health and Safety Executive.

Releasing Resources to the Front Line: Independent review of public sector efficiency, (2004), Sir Peter Gershon CBE, HMSO.

Sickness Absence Policy – a trade unionists' guide. Labour Research Department.

Working together to Prevent Sickness Absence becoming Job Loss: Practical advice for safety and other trade union representatives, (2004), Health and Safety Executive.

D Using this guide for training workshops

This guide can be used as a structure for a training workshop for UNISON safety reps. Below is a proposed timetable for a one day training session.

- 10:00 Presentation by the moderator and open discussion about absence agreements and potential management abuse of absence provisions.
- 10:30 In small groups discuss both good and bad management practices relating to absence. Refer back to the five themes relating to absence agreements: Is one area in particular neglected in your agreement or by management? Moderator to spend time discussing issues with each group individually.
- 11:30 Tea/Coffee break
- 11:45 In groups, go through the discussion with management guide list (p.26) and discuss what is missing from your absence agreement/procedures.
- 13:00 Lunch
- 13:45 All participants to prepare an 'action plan' highlighting areas they want to see incorporated in their agreement or would like to discuss with management. Moderator to provide action plan sheet highlighting the following five themes:
- 1) Monitoring and absence figures
 - 2) Exemption from absence procedures
 - 3) Return to work provisions
 - 4) Management competency and discretion
 - 5) Contact, counselling and occupational health
- 14:45 Tea/Coffee
- 15:00 Each group to prepare and give a short presentation (10 minutes) about the kind of actions they intend to take in respect to their absence agreements (overhead projector and acetates to be provided).
- 16:30 Moderator to summarise and provide details of how to acquire more detailed information on absence agreements and Absence Management.
- 17:00 END

If the workshop is to be conducted in just half a day, you may vary the above schedule appropriately.

E Guidance list for absence agreement discussions

This page is designed to be photocopied.

Use this list as a guide when discussing absence provisions with management. Use your discretion.

ISSUES TO DISCUSS WITH MANAGEMENT	YES	NO
1 Monitoring and absence figures		
Safety reps are consulted on absence figures and analysis		
Monitor and challenge how management uses absence figures		
Discourage financial incentives linked to team or departmental attendance		
Targets are reasonable and well publicised		
Reference periods for targets are no less than 12 months		
2 Exemption from absence procedures		
Absence due to ill health caused by work not subject to same procedures		
Absence relating to disability not subject to normal absence procedures		
Maternity or paternity absence not subject to normal absence procedures		
Special provisions for absence for religious purposes included		
Special provisions for compassionate leave, child care and carers'		
3 Return to work provisions – punishment or rehabilitation?		
Sick employees are not being intimidated by management*		
Return to work procedures based upon rehabilitation not punishment		
Employees are allowed union representation		
Work with management (and members) to derive a return to work plan		
Seek and highlight innovative rehabilitation methods to management		
4 Management competency and discretion		
Absence procedures are not overly rigid		
Where discretion is used, UNISON is always consulted		
Request absence figures, including figures for management absence		
Managers receive training in how and when to use discretion		
Time-off permitted for UNISON/TUC run sickness absence courses		
5 Contact, counselling and occupational health		
Medical certificates are required only after a full week of absence		
Reps advice is sought on how best to maintain contact with absent workers		
Contact or counselling is always focused on rehabilitation		
Occupational health services are independent from management		
Request occupational health advice when developing return to work plans		

*Some management practices may constitute harassment or even bullying in the workplace

If you need further guidance please contact your local branch