Sickness Absence Management and Hybrid Working

Podcast/Webinar transcript prepared for XpertHR by Callisto Connect.

Noelle Murphy: Hello, and welcome to the XpertHR podcast. My name is Noelle Murphy, and I'm really pleased to be joined by Stephen Simpson. Stephen is our principal employment law editor here for us at XpertHR and also co-author of our comprehensive policies on long- and short-term sickness absence. Stephen is joining us today to talk about effectively managing sickness absence and how things have changed with the introduction of hybrid working.

So we're going to set the scene a little with the findings from our latest annual survey on sickness absence rates. So for 2021 sickness absence rates climbed to their highest level since 2009, with the average sickness absence rate standing at 3.2%. This was up from 2.5% in 2020 and 2.9% in 2019. Now, these rates translate to an average of 7.3 days per employee per year lost to sickness absence, and that's up from 5.7 days in 2020.

Now, when we look overall, these figures are really very different from 2020, which we recorded the lowest level of sickness absence since we started gathering data sixteen years ago. And we know that in 2020 these figures will have been somewhat depressed by the impact of the coronavirus pandemic due to the effects of homeworking, shielding and employees placed on furlough.

So Stephen, thanks so much for joining us today. [0:01:52.3]

Stephen Simpson: Hello, Noelle.

Noelle Murphy: So like I've said, we've seen sickness absence rates rise in 2021, and I suppose that wasn't unexpected. Much of it can be explained by coronavirus and all of the changes to mitigations that were introduced. But it's still crucially important for organisations to have effective sickness absence management at the top of their agenda, isn't it? [0:02:18.7]

Stephen Simpson: That's right. So every HR professional listening will know the importance of getting absence management right, from both a practical point of view for the organisation but also from a legal and risk management perspective. It's very important that absent employees are treated fairly and consistently by line managers and HR from the moment they ring in sick right through to their return to work, including potential return-to-work meetings and adjustments to their working arrangements that might be needed.

Noelle Murphy: And Stephen, ineffective absence management can have consequences far beyond the individual who's been absent, can't it? [0:02:56.1]

Stephen Simpson: Morale and employee engagement can be affected, as other employees will often notice if the employee's absence has been mishandled. People covering their work can be affected, which can lead to other absences or grievances. So absence management can be a very great time and resource drain on both line managers and HR.

Noelle Murphy: And of course you mentioned the legal risks. [0:03:18.2]

Stephen Simpson: Yes. There's always the risk of tribunal claims that come in the background, whether that be for disability discrimination, where potential compensation is uncapped; unfair dismissal, including constructive dismissal if the employee reacts by resigning; and there are considerations in relation to health and safety legislation and also data protection laws, especially as health data is special category data under the GDPR. So that's just a few reasons why absence management has to always be front and centre of the HR agenda.

Noelle Murphy: And also, Stephen, hybrid working introduces a new layer of complexity to sickness absence management. Why is it important for employers to think carefully about the relationship between hybrid working and sickness absence? [0:04:06.5]

Stephen Simpson: So clearly the mere fact of not being in the office on certain days has changed some employees' attitude to sickness absence. For example, they may have times when they're feeling too unwell to commute but feel well enough to work at home. So employers need to adapt their approach and set some clear guidelines for hybrid workers.

Noelle Murphy: And Covid has changed the way employers and employees should think about risk too, hasn't it? [0:04:31.2]

Stephen Simpson: Exactly. Gone, hopefully, are the days when employees would be expected to attend the workplace when clearly sick, coughing and spluttering away next to colleagues. It just doesn't make for a happy workplace and risks a Covid outbreak or the spread of other common illnesses such as colds and 'flu, which can lead to staffing difficulties if lots of people get sick at once.

That's one of the major benefits for employers of offering hybrid working. They have the option of agreeing with an employee who's mildly ill but who may still be infectious to work at home at short notice, if the nature of their work allows for this.

Noelle Murphy: So Stephen, it's really important for employers to set clear ground rules for staff operating under a hybrid model, isn't it? [0:05:15.5]

Stephen Simpson: Yes, I think there are two areas within sickness absence management that employers should focus on here with the hybrid workforce. Firstly, employers must make it clear that employees should not work unless they feel able to.

Line managers should not encourage or turn a blind eye to staff who are working from home, carrying on working when you should be off sick, for example. And secondly, employees should be reminded the usual sickness absence reporting procedure still applies, even if it's a day that they would normally be working at home.

Noelle Murphy: And to pick up on that, Stephen, could you remind us what a typical reporting procedure would look like? [0:05:54.6]

Stephen Simpson: Typically that would be employees notifying their line manager of their ill health as soon as reasonably practical, and preferably before they are due to start work. And in any event, no later than one hour after they're due to begin work. That's how we frame it in our model short-term sickness absence policy, ie making it a reporting requirement but building in enough flexibility to cover various eventualities, for example, where the employee is too sick to come to the phone at a particular time.

Noelle Murphy: And what method of communication do we recommend that employers require employees to use? [0:06:31.0]

Stephen Simpson: Employers' approaches will vary. For some, an email, text or, say, Teams message will be sufficient, but many employers will require employees to speak directly to their line manager on each day of absence or at least every couple of days after the first day, which is a good way to maintain contact between employee and line manager and allows the line manager to get any essential information off them, for example, any work that needs covered.

Noelle Murphy: And Stephen, when we look at sickness absence reporting in a hybrid work model, can you see any potential problems or issues for employers? [0:07:08.0]

Stephen Simpson: I'd say it's a good idea for employers to give employees the option to telephone, rather than asking an employee to log in to their work computer to report sickness. For example, requiring them to speak to their line manager on a video call via Teams.

Noelle Murphy: And why do you say that? [0:07:24.4]

Stephen Simpson: So two reasons, really. Firstly, requiring an employee to log on when they are sick could encourage a sick employee to start checking their emails and message and doing other odd jobs, whereas if they are sick the line manager should just speak to them briefly to find out what work needs to be covered. And then secondly, I'd say employers should ensure that line managers aren't being over-zealous here. For example, some employees just don't want to be on camera while they're ill at home, and line managers need to respect that privacy.

Noelle Murphy: And line managers also need to be aware of the need to be sensitive during such phone calls, don't they? [0:08:02.4]

Stephen Simpson: That's right. And that can be easier said than done for line managers, who quite rightly need to follow the employer's absence reporting procedure, including recording the reason for the absence, who may have to deal with practical issues like what work needs covered and who could be facing staffing issues or pressures from above. But there are ways for line managers to take a sensitive approach. For example, don't start a conversation with, 'When do you think you're going to be back at work?' but instead say first, 'How are you feeling?' Another example might be don't remind the employee or make them feel guilty about all the work waiting for them. Instead, explore with them what additional support they need to help them to return to work as soon as possible.

Noelle Murphy: So the message is that it's really important for employers not to blur the lines between time working and time when somebody doesn't feel well enough to actually be at work. [0:08:55.4]

Stephen Simpson: Exactly. A good example there might be a line manager or a colleague saying something along the lines of, 'I know you're off sick, but we have this really important meeting today and it won't kill you to log on for an hour to join the meeting.' That's the sort of thing that employers want to avoid.

Noelle Murphy: And so another thing, another situation when we're looking at hybrid working is potentially an employer suggesting to an employee that they switch around their days attending the office, so that would mean that they work at home when they are sick and then come in on a day later when they have recovered. [0:09:31.1]

Stephen Simpson: So there I'd say the reality for a lot of employees, especially those with young children or who are carers, is that they may not be in a position to change their arrangements at short notice. Employers are able to build some flexibility into the hybrid model. For example, stating in a hybrid working policy that means they can sometimes be expected in on a day that they don't normal travel to the office, for example to attend essential in-person training. But a reasonable employer will give the workforce sufficient notice. Fair employers are unlikely to ask an employee to come in at very short notice.

Noelle Murphy: So let's talk a little bit now about fit notes and sick pay under the hybrid model. Employers can still require employees to provide evidence of sickness after seven days absence, can't they? [0:10:18.5]

Stephen Simpson: That's right. They can do, although this is an area where pre-pandemic an employer may have had a strict requirement but may now have to be a bit more flexible. For example, employees may have increased difficulty in getting

to see a doctor these days for health issues. If the employee is having genuine difficulty in getting a fit note, the employer can make an exception to its normal requirement for medical evidence from the employee's GP.

Noelle Murphy: So really it's a common-sense approach from the employer, isn't it? [0:10:47.1]

Stephen Simpson: Yes. The employer can still take all reasonable steps to verify the sickness absence. So that could include requiring the employee to keep in regular contact with their line manager and explain what medical advice they've sought and followed. Employers should also remember that at the time of recording this podcast in May 2022 anyway, employees could still get an isolation note from the NHS if they have Covid and are voluntarily self-isolating. So an isolation note should be treated as valid evidence too.

Noelle Murphy: So Stephen, when it comes to long-term sickness absence and maintaining contact with that individual who is off sick, that contact can take a different pattern, can't it? [0:11:31.8]

Stephen Simpson: Yes. So at some point around the time when short-term becomes long-term sickness (28 calendar days is a fairly common marker for employers), line managers will need to adapt their approach when clearly daily contact could be perceived as intimidating by the employee. It's good practice for the manager to have an empathetic and sensitively handled discussion with the employee to agree a regular pattern of contact, remembering that the timing and frequency should be sensitive to the employee's health needs. For example, an employee with anxiety may benefit from an agreement that the contact be at a regular time so that it's expected.

Noelle Murphy: And Stephen, can you tell us what the current position is on statutory sick pay? [0:12:16.8]

Stephen Simpson: There were some special SSP rules put in place because of Covid, including the temporary removal of the usual three working days for SSP to be payable, SSP being payable to individuals who test positive even if they were not ill, and the temporary increase in the self-certification period from seven days to 28 days during the height of the Omicron wave to ease the pressure on GPs.

Noelle Murphy: Just to be absolutely clear, statutory sick pay rules have now reverted to the pre-pandemic position, haven't they? [0:12:51.7]

Stephen Simpson: That's right. So SSP is no longer automatically payable to employees who test positive, and is payable only from Day 4 for a period of incapacity. In addition, the self-certification period has gone back down to seven days.

Noelle Murphy: So technically, SSP is not available now to someone who misses work because they have tested positive or someone who has been in close contact with a positive Covid case. [0:13:20.6]

Stephen Simpson: That's right. And this actually causes a big dilemma for employers because it does create a risk that staff could attend work when they are infectious. On the one hand, the Government recommends in its guidance on reducing the spread of respiratory infections in the workplace that employers (and just to quote here) *may wish to consider how best to support and enable their workforce to follow this guidance as far as possible*, which includes advice to try and stay at home and avoid contact with other people if they are symptomatic or have tested positive.

Noelle Murphy: So presumably that's where enhanced contractual sick pay can come in useful for employers? [0:13:58.5]

Stephen Simpson: Yes. A good employer will want to do what it can to reduce the risk of potential Covid carriers attending the workplace. A really powerful tool for the employer will be offering enhanced sick pay, in other words continuing to pay staff their full pay in these circumstances. I'll tell you the other major thing that employers can do to discourage workers from attending work in these circumstances is to exclude Covid-related sickness absence from any absence management calculations that could ultimately trigger an attendance management review. A lot of employers should be doing that already.

Noelle Murphy: And Stephen, discouraging colleagues to attend work while sick or, you know, potentially infectious has a number of wider benefits to the employer, hasn't it? [0:14:44.2]

Stephen Simpson: Yes. So it can increase the workforce's confidence in the employer's safe working measures, reduce sickness absence by lowering infections spreading in the workplace, and really just give confidence to staff, including reluctant returners, that the workplace is a safe place to be.

Noelle Murphy: Stephen, thanks so much for joining us. We really have covered a huge amount there.

Stephen Simpson: Thanks, Noelle.

Noelle Murphy: So if you want any further guidance on managing sickness absence, our good practice guides on long-term sickness absence and short-term sickness absence are available on the site. We also have line manager briefings available.

Well, that's all for today. Thanks so much for listening and please do join us again next time.