

Sick

of it?



A PRACTICAL GUIDE TO NEGOTIATING
ALL ASPECTS OF SICKNESS ABSENCE
POLICIES IN FURTHER EDUCATION

Sick *of it?*



Contents



Introduction to the guidance 3

The context 4

Challenging the context 5

Defending sick pay 6

How will a cut in sick pay affect me? 10

Checklist 11

Useful Information 15

1. Introduction

Why is this guidance needed?

This guide is aimed at branch officers and activists involved in campaigning and negotiating on the issue of sick pay and sickness absence measures in further education (FE) in England. It is designed to give you practical information and suggestions to help you in your negotiations.

The Association of Colleges (AoC) unilaterally withdrew from the national *Joint agreement on guidelines on sickness leave in further education colleges* in December 2012. Since the withdrawal a number of colleges have reviewed their own sickness absence policies. Negotiations to try and re-establish the national agreement broke down in January 2014.

With the continued funding pressures on colleges, it is likely that sick pay entitlements will remain under attack for the foreseeable future. The need for clear and meaningful arguments against any detriment to our members' sick pay and entitlements is more important than ever.

What does this guide include?

► THE NATIONAL CONTEXT

We will look at the overall bargaining context in which individual branches are negotiating and defending sick pay and the way in which sickness absence is monitored and managed in detail.

► THE ARGUMENTS YOU CAN USE DURING NEGOTIATIONS

This guidance will rehearse some of the arguments your employer might give for changing or attacking your sick pay or sickness absence procedures and the information you need to counter those arguments. These will include questioning the financial assumptions that may have been made and whether there are any underlying reasons for patterns of sickness that can be tackled in other ways.

► HOW CUTS TO SICK PAY WILL IMPACT ON MEMBERS

This will include some examples of how attacks on sick pay can impact on individuals and the effect it will have on their pay.

► EQUALITY IMPACT

We will cover the most important aspects of the equality duty in relation to sickness absence.

► CHECKLIST

There is a list of key points to help you cover all the main areas in your negotiations.

Your regional office can provide advice, information or campaign materials you need to help your negotiations. If any aspect of your sick pay or policy is under attack, or you need support with individual casework relating to sickness absence, call your regional office.



If you are not sure ask! Your regional office are here to help and can provide advice, information and campaign materials.

2. The context

In December 2012 the AoC wrote to the joint FE trade unions and gave notice that they were unilaterally withdrawing from the **Joint agreement on guidelines on sickness leave in further education colleges**

www.ucu.org.uk/feagreements_engwal

The agreement stated: *Subject to the provisions of this scheme, employees will be entitled to the following periods of sick pay:*

SERVICE	SICK PAY
During first year of service	One month's full pay and, after four months' service, two months' half pay
During second year of service	Two months' full pay and two months' half pay
During third year of service	Four months' full pay and four months' half pay
During fourth and fifth year of service	Five months' full pay and five months' half pay
After five years' service	Six months' full pay and six months' half pay

This agreement is in line with teachers as set out in the **Conditions of Service for Teachers in England and Wales**.

While UCU are disappointed that the AoC have chosen to step away from what is seen as a standard benefit across education, we have made it clear we wish to continue to work with the AoC to resolve this matter and are willing to discuss sickness absence procedures www.ucu.org.uk/media/docs/4/o/febranchupdate_14dec12.rtf

The AoC position does not automatically change anything in your college. There is no call from the AoC for colleges to cut their sick pay provisions or procedures. The AoC reminds colleges

that: *'... where a college has adopted the April 2000 joint agreement as a local collective agreement, the arrangements for paid sick leave will have become incorporated into individual employee's contracts of employment, and thus cannot be unilaterally changed without collective consultation and agreement to any proposed variation.'*

This will also be the case for any sick pay provisions or procedures that are incorporated into your contract of employment. Any changes to conditions of service should be negotiated with UCU and in accordance with ACAS guidance as a minimum standard www.acas.org.uk/index.aspx?articleid=4199



The AoC says sickness absence management policies '...cannot be unilaterally changed without collective consultation and agreement to any proposed variation.'

3. Challenging the context

A UCU response

Across the FE sector, UCU members are facing attacks on their conditions of service and falling further behind their nearest comparators such as school teachers. Colleges seeking to reduce the level of sick pay or introduce punitive sickness absence management procedures must be challenged to avoid a race to the bottom.

Colleges may assert that they will save significant sums of money. This is rarely borne out by evidence. What is clear, however, is that it does produce a real terms pay cut for those who may find themselves in the position of needing the support of longer-term sick pay.

The introduction of sickness absence management procedures are often not thought through and are used to avoid addressing underlying causes of sickness absence including workplace stress.

Unrealistic measures and links to disciplinary procedures are sometimes introduced in reaction to a single case that was not appropriately dealt with and thus punishing all hard working staff rather than managing a single exception.

Branches should encourage all colleges to work with UCU to ensure workplaces are

healthy. Any risks to physical or mental wellbeing of staff should be identified and reduced as far as possible. Members should not be subject to terms and conditions that encourage them to come to work when they are not well enough to do so simply for fear of losing pay or being accused of shirking their duties.

In the next two sections we will look at some of these arguments in more detail.



Reductions in sick pay or the introduction of punitive sickness absence management procedures must be challenged to avoid a race to the bottom.

4. Defending sick pay

The following sections give some of the arguments that we know colleges will try to use if they are seeking to attack sick pay or introduce tougher measures to manage

sickness absence. It will also suggest some practical points and questions you can raise to challenge their assumptions.



WHAT THEY SAY

Jobs or sick pay? It's your choice.



WHAT WE SAY

We acknowledge the FE funding situation and we will work with colleges and the AoC to lobby the Government; however at a local level this is a false choice.

- ▶ Ask your employer for evidence.
- ▶ Ask to see the budget for the coming year and the forecasts they have made to demonstrate the savings they say they will make.



WHAT THEY SAY

Long term sick pay must be cut to save money.



WHAT WE SAY

- ▶ **Challenge assumptions such as saving on long term illnesses by using examples.** A college is highly unlikely to remove pay from an employee who is off with a long term illness such as cancer. Most policies will already contain the ability to continue to pay sick pay on a discretionary basis. These cases are likely to be the majority of the small number of long term cases and hence the saving will be minimal.
- ▶ Are the potentially minimal savings balanced by the loss of morale and trust amongst all staff? Is it consistent with the ethos of the college?
- ▶ How has the cost for cover been calculated? How much of it is an additional cost to the college e.g. using agency staff rather than internal cover? The need to cover absent staff should not be used to set colleagues against each other.
- ▶ Ask if the colleges' insurance policy covers salaries for those off on long term sick leave after a certain length of time.

**WHAT THEY SAY**

Pay for the first three days of absence must be cut to save money.

**WHAT WE SAY**

▶ **A reduction in sick pay can encourage staff to attend work when they are not well enough.** This may result in longer periods of absence, the spread of illness, low morale and reduced work quality.

▶ **It is not in the student's interest to be taught by lecturers working under such conditions.** Speak to the Students' Union to gain their support.

There are examples of the impact of cuts in sick pay in the next section.

**WHAT THEY SAY**

We have to manage absence levels and stop people from 'throwing a sickie'.

**WHAT WE SAY**

▶ **The employer is entitled and needs to manage its resources and staff are its most important asset.**

▶ **The college must start from a position of trust.** It is not in anyone's interest to leave persistent unauthorised absence unchallenged but these cases will be exceptional.

▶ **Offer to work jointly with the college to agree a fair sickness absence management process.**

**WHAT THEY SAY**

Levels of sickness absence are too high.

**WHAT WE SAY**

▶ **What issue is it that the college are seeking to address and is this backed up by their evidence?** For example does the college assert long term absences are too costly?

▶ **Ask to see the record of sickness absence across the college.** This should include a breakdown of job type, work area, time of year and the reason for the absence.

▶ **Are there any patterns in the sickness absence data?**

▶ **What are the reasons for these patterns?**

▶ **Can any areas of unusually high absence be addressed in other ways?** These might include risk assessments and appropriate actions as a result of the assessment for job types that are known to have a higher level of ill health risk.





WHAT THEY SAY

We will use the Bradford Factor to decide if sickness absence levels of individual staff members are acceptable.



WHAT WE SAY

- ▶ **As above the college are entitled to manage absence levels.**
- ▶ The Bradford Factor is a formula used to give a numerical value to patterns of absence. The lower the score the better the sickness record.
- ▶ Using this or any formula to decide whether a pattern of sickness absence is acceptable or not is a blunt tool.
- ▶ It cannot take into account the variations in sickness absence patterns that may have been identified in the college's records.
- ▶ It is not flexible and cannot accommodate variations in an individual's own sickness absence record.
- ▶ It could encourage staff to come to work when they are not well in order to stay under an arbitrary score.



WHAT THEY SAY

Our aim is to be fair to all staff



WHAT WE SAY

- ▶ **Colleges have a general duty of care to all their staff.**
- ▶ All changes to sick pay or sickness absence management procedures must be subject to an equality impact assessment.
- ▶ Employers have a duty under the Equality Act to ensure those who are protected by the Act are treated equally and fairly.
- ▶ Two categories of staff that are likely to be significantly affected by sickness are those who are disabled and/or pregnant.
- ▶ Sickness absence related to a disability should not fall under the sickness absence management policy. If a particular disability is likely to result in a higher than usual level or different pattern of absence this should be discussed as part of any reasonable adjustments and regularly reviewed. This includes any mental health issues falling under the definition of the Equality Act.
- ▶ Sickness absence for pregnant employees should not fall under the sickness absence management policy and should be discussed as part of the risk assessment and regularly reviewed.
- ▶ The reasons for absence should be recorded and appropriate adjustments should be made where there are known or suspected health or wellbeing issues. Referrals to Occupational Health should be made with the aim to support the employee.





WHAT THEY SAY

We don't have to talk to the unions to make these changes



WHAT WE SAY

- ▶ **The AoC has been very clear that sick pay and procedures ‘...cannot be unilaterally changed without collective consultation and agreement to any proposed variation’.**
- ▶ **If sick pay and/or the sickness absence policy is incorporated into your contract changes must be subject to consultation.**
- ▶ **Colleges would be falling short of ACAS codes by imposing such changes without consultation and agreement.**
- ▶ **Colleges seeking to impose changes would cause huge damage to their relationship with staff and will reduce good will.**
- ▶ **UCU will vigorously defend members facing attacks on sick pay and policies. Colleges will risk a trade dispute if they seek to impose such changes.**



WHAT THEY SAY

We will proceed with disciplinary or capability procedures for staff who are persistently off sick



WHAT WE SAY

- ▶ **The links between sickness absence and disciplinary or capability issues are at times very badly managed. These sections and the other relevant policies should be checked carefully with your regional office to ensure individual members are treated fairly and transparently. There should be no automatic link from measures such as the Bradford factor to disciplinary procedures.**



Ask for evidence! You are entitled to see the information you need to negotiate meaningfully.

5. How will a cut in sick pay affect me?

In colleges that are making changes to their sick pay arrangements, some have sought to make drastic cuts of over 50% in a number of cases. To see how this will impact on members who may find themselves in the unfortunate position of having a long term illness and needing to rely on occupational sick pay we have undertaken some pay modelling as set out in the chart below.

Although the AoC have unilaterally pulled out of the joint national agreement we are using its provisions as our benchmark. They are in

line with our nearest comparators in higher education and for school teachers.

We have modelled the AoC offer made in December 2013, which was rejected by all of the trades unions. We have also modelled a cut of 25% and 50% on the current position.

For the purposes of the example we have taken the average salary for an FE lecturer who is off sick for one year. (£34,472 in 2012/13 *Annual Survey of Hours and Earnings*)

www.ons.gov.uk/ons/rel/ashe/annual-survey-of-hours-and-earnings/index.html.

YEARS OF SERVICE	CURRENT POSITION	TOTAL CURRENT SICK PAY	AOC OFFER DECEMBER 2013	LOSS FROM CURRENT POSITION TO AOC OFFER	25% CUT FROM CURRENT POSITION	50% CUT FROM CURRENT POSITION
During first year of service during probation/less than four months service	One month's full pay	£2,872.66	Statutory sick pay only	*£2,525.98	£718.17	£1,436.33
During first year of service after probation/four or more months' service	One month's full pay and two months' half pay	£5,745.32	One month's full pay and one month's half pay	£1,436.33	£1,436.33	£2,872.66
During second year of service	Two months' full pay and two months' half pay	£8,617.98	Two months' full pay and two months' half pay	None	£2,154.50	£4,308.99
During third year of service	Four months' full pay and four months' half pay	£17,235.96	Four months' full pay and two months' half pay	£2,872.66	£4,308.99	£8,617.98
During fourth and fifth year of service	Five months' full pay and five months' half pay	£21,544.95	Four months' full pay and two months' half pay	£7,181.65	£5,386.24	£10,772.48
After five years' service	Six months' full pay and six months' half pay	£25,853.94	Four months' full pay and two months' half pay	£11,490.64	£6,463.49	£12,926.97

*Assumes a probationary period of one month

As you can see from table above, the real terms pay cut to a member off sick, at a very vulnerable time in their life, could be very large indeed. The loss of occupational sick pay within the probationary period as stated in the offer by the AoC in 2012 is startling. The losses illustrated here resulting from the

2012 offer makes it very clear why the trades unions rejected this offer.

The losses demonstrated by a more modest cut to sick pay support all of the concerns we have already highlighted and why it is so important that UCU continue to defend any attacks on sick pay.



*Off sick for one year?
Cuts to sick pay could mean you lose up to £12,926.*

6

Checklist

We know the context in which we are defending sick pay is difficult and colleges will put forward seemingly plausible arguments for making cuts to sick pay or toughening up measures to manage sickness absence.

However, we have also seen that the arguments put forward by colleges are often a knee-jerk reaction and rarely address the real issues.

As we have demonstrated, cuts to sick pay and entitlements have a real and significant impact on members when they are at their most vulnerable.

Defending sick pay and entitlements is a UCU priority and we will support branches to achieve the best results possible.

The following are some of the key points that you should cover in your negotiations with management. Please use the comments box for any additional information:



Are UCU being consulted about any proposed changes?

Yes

We recommend the consultation period should be at least 30 days. Set up regular Joint Consultation Committee (JCC) meetings. In accordance with ACAS guidance the college must consult and where the previous joint agreement was in place or sick pay provision/ policy are incorporated into the contract they must consult on and agree changes with staff.

No

If the college refuse to engage in consultation speak to your regional office immediately. A trade dispute should be considered.



Comments

Have you informed your regional office?

Yes

Your regional office can support you with any advice, information or campaign materials you need to help your negotiations.

No

It is crucial to involve your regional office at the earliest stage in order to make sure we spread good practice and as much consistency as possible. It may be that the college down the road has a better policy and can be used as a bargaining chip with your employer.

Comments

Have you received the proposals in writing?

Yes

No

The JCC must be provided with a written version of any proposed changes in order to consult in a meaningful way.

Comments

Has the evidence the college have used to reach their proposals been shared with UCU?

Yes No

The JCC must be provided with all the information it needs to ensure the consultation is meaningful. This may include:

- ▶ financial information
- ▶ breakdown of sickness absence figures
- ▶ staff breakdown by equality group

Comments

Will the changes apply to all staff groups?

Have you spoken to any the relevant unions if all staff groups are impacted by the proposals?

Yes No N/A

Work with the other unions where applicable and possible to ensure you are in the strongest position to negotiate. All relevant trades unions should be consulted in the same manner.

Comments

Has sickness absence related to disability been removed from the policy?

Yes No

The sickness absence policy must have a clause explaining that disability-related sickness absences will not be counted for the purposes of this policy. The detail of how disability related sickness absence will be managed should be given in a separate policy.

Comments

Has sickness absence related to pregnancy been removed from the policy?

Yes No

The sickness absence policy must have a clause explaining that pregnancy-related sickness absences will not be counted for the purposes of this policy. The detail of how such absences will be managed should be given in a separate policy.

Comments

Have you discussed the appeals procedure with your regional office?

Yes No

The policy must include access to an appeal. This will apply to various aspects of the policy such as the discretion to continue to pay sick pay and the absence management procedures. This should include the right to be accompanied at any formal stage of the procedure.

The policy should also state that the college will speak to the relevant trade union senior or paid official before any formal action is taken in relation to a trade union representative. Your regional office is best placed to help you ensure there is a fair appeals process in place.

Comments

Have you discussed the link to disciplinary and capability policies with your regional office?

Yes No

There is a necessary link between sickness absence management policies and disciplinary and capability policies. A dismissal on the grounds of ill health can, in law, be a fair dismissal. However, the link between these policies is often badly managed. Your regional



office is best placed to help you ensure the processes in place are fair and transparent.

Comments

Will it be incorporated into the contract?

Yes No

Incorporating the sick pay provisions and procedures into the contract does give additional protection in the future. Staff must be consulted in accordance with ACAS guidance about changes to their conditions of service. If such terms are incorporated into the contract the changes should be consulted upon and agreed with staff

Comments

Review procedure for the policy?

Yes No

It is good practice to include a review procedure in every policy to ensure they are working as intended, remain relevant and are up to date with any legislative changes. Policies should usually be reviewed on an annual basis.

Comments

Have all staff been trained on all changes?

Yes No

All staff should receive training on new or amended policies. Employers will sometimes put the responsibility onto staff to familiarise themselves with all policies and feel that putting them in a staff handbook or on the intranet is enough. It is not.

Managers should receive training to ensure they have the skills and confidence to manage their staff fairly and transparently. All staff should receive training to ensure they understand what is expected of them. They should feel confident in the process and their manager's ability to respond and manage them fairly and transparently.

Comments

Have the changes been equality impact assessed (EIA)?

Yes No

All changes to existing policies or new policies must be subject to an EIA and the results made available to the JCC. Guidance and an EIA pro forma are available from the Equality and Human Rights Commission.

Comments



Incorporating the sick pay provisions into the contract does give protection in the future. Staff must be consulted in accordance with ACAS guidance about changes to their conditions of service.

7. Useful information

Below are links to further information and the details of all regional and national offices.

If you are not sure, ask! Your regional office is here to help.

Document links

FE Branch Officers Update 14 December 2012

FE England Sick Pay Agreement

www.ucu.org.uk/media/docs/4/o/febranchof-fupdate_14dec12.rtf

Joint Agreement on Guidelines on Sickness Leave in Further Education Colleges

www.ucu.org.uk/feagreements_engwal

ACAS

www.acas.org.uk/index.aspx?articleid=4199

www.acas.org.uk/index.aspx?articleid=4580

HSE

www.hse.gov.uk/sicknessabsence

LRD Sickness absence and sick pay – a guide for union reps

www.lrdpublications.org.uk/publications.php?pub=BK&iss=1535

TUC Sickness and Disability Discrimination

www.tuc.org.uk/equality-issues/disability-issues/disability-discrimination/disability-resources/sickness-absence-0

TUC In sickness and in health – good work and how to achieve it

www.tuc.org.uk/sites/default/files/extras/goodwork.pdf

UCU – Sickness Absence: the Bradford Factor

www.ucu.org.uk/media/pdf/a/s/Sickness_Absence_-_The_Bradford_Factor_Factsheet.pdf

UCU regional offices

London

londonregion@ucu.org.uk

Tel: 020 7756 2500

East Midlands

eastmidlands@ucu.org.uk

Tel: 0121 634 7384

Yorkshire and Humberside

feyorkshire@ucu.org.uk

Tel: 0113 243 1915

South

southern@ucu.org.uk

Tel: 023 9281 8625

South East

southeastregion@ucu.org.uk

Tel: 020 7756 2500

North West

Tel: 0161 772 7011 (HE)

0161 772 7010 (FE)

West Midlands

westmidlands@ucu.org.uk

Tel: 0121 634 7380

Northern

gateshead@ucu.org.uk

Tel: 0191 487 7220

Eastern and Home Counties

eastern@ucu.org.uk

Tel: 020 7756 2500

South West

exeter@ucu.org.uk

Tel: 01392 412 525

IMPROVE THIS GUIDE You can help us improve this guide by letting us know when your branch gets a win on sick pay and how you did it. Email Jenny Lennox, UCU Bargaining and Negotiations Official jlennox@ucu.org.uk

.....
Produced by UCU Bargaining and Negotiations
Carlow Street, London NW1 7LH
020 7756 2500 / www.ucu.org.uk / February 2018
.....

