NHS Employers’ response to the consultation - Health is everyone’s business: proposals to reduce ill health-related job loss
October 2019

Introduction

NHS Employers is a national organisation, representing the views of employers in NHS trusts in England. We represent workforce leaders across the NHS in national negotiations and policy developments, and provide practical advice, guidance and good practice on workforce issues.

To deliver high quality patient care, the NHS needs staff that are healthy, well and at work. Looking after the health and wellbeing of staff directly contributes to the delivery of quality patient care. Poor workforce health has high and far reaching costs to NHS organisations and ultimately patients.

In this response we have summarised the key points highlighted by employers during our consultation activities. To inform this response we have engaged employers through virtual conversations, an online survey and individual conversations. It also includes input from our network of health and wellbeing leads, which comprises over 950 members responsible for the health and wellbeing of staff in their organisation.

In addition, we have raised awareness about the consultation through our communication channels and encouraged organisations to respond directly to the consultation.

Our response articulates a clear message from employers that any changes to legislation relating to employee health need to be backed up by funding and
support nationally, to ensure NHS organisations are able to implement and support them.

This response highlights:

- Good practice already taking place in the NHS, enabling more employees to stay well, stay in work and return to work
- Challenges and barriers NHS organisations face in relation to supporting employee health
- NHS employers willingness to enable all employees to access work(place) modifications to support them to stay well and in work
- Employer concerns relating to the effectiveness of a new right to request work(place) modifications
- Significant concerns about the existing and future OH provision to support NHS employees

**Current context in the NHS – supporting employees with health conditions**

NHS trusts are continuing to focus on supporting employees with health conditions and those off sick to stay in and return to work. The process and support for employees varies significantly across trusts and is largely dependent on the funding, resourcing and the culture of the organisation. Many of the employers we engaged with demonstrated good practice in supporting their employees, already going further than legislation requires. Employers support their staff through reasonable adjustments and work(place) modifications, phased returns, therapeutic returns and enabling rapid access to treatment. Employers face significant barriers and challenges to supporting employees in these ways, many of which are linked to national challenges relating to funding and workforce supply.

*Managing sickness absence*

NHS organisations have a range of processes and services in place to support employees to prevent and manage sickness absence, as well as provide support during and after episodes of sickness absence. Policies having a positive impact on the workforce focus on the person, provide support and guidance for those with ongoing health concerns and have often been developed in partnership with trade union colleagues. Line managers are
responsible for supporting employees during sickness absence, including keeping in touch, referrals to occupational health and developing a return to work plan.

**Occupational health provision**

NHS trusts provide their staff with occupational health services. This happens through a range of mechanisms. Some NHS organisations have in-house occupational health services, whilst others use an external provider which could be either provided through an NHS provider or a private organisation.

Employers felt that the availability of guidance and advice from occupational health clinicians was a key enabler to supporting employees to return to, or stay in, work. Occupational health advice is extensively relied upon by NHS trusts to support reasonable adjustments, work(place) modifications and return to work plans, including phased returns.

The quality, availability and timeliness of this advice varies across organisations. Employers feel that their occupational health services are not adequately funded and staffed to meet the high level of demand for these services, resulting in long waiting times, delaying staff accessing treatments or support, and, meaning that many staff are off sick for longer than necessary.

**Access to treatment and rehabilitation**

Employers feel that ensuring NHS staff have timely access to treatment for health conditions is a key element of supporting them to stay well, stay in work and/or return to work. This is particularly pertinent for employers to support their staff with mental health and musculoskeletal issues, which are the main causes of sickness absence in the NHS.

Some NHS trusts provide physiotherapy and psychological services in-house by employing specialist clinicians to specifically support their employees. A small minority of trusts provide this service through a third party or employee assistance programme (EAP), and many employers don’t have any specific provision and rely on employees accessing these services through their GP. Trusts which provide these services in-house are usually able to diagnose and treat employees more quickly, thus facilitating them to stay in or return to work.

Employers feel that provision of these services in a timely way would support more employees to stay in or return to work. However, trusts face barriers to
funding such services. Without adequate treatment and rehabilitation to support staff, NHS organisations are limited in the extent to which they can do more... Without these services to complement approaches such as work(place) modifications and phased returns, we risk leaving employees with long term health conditions which may deteriorate or re-appear, ultimately affecting their health and the NHS’s ability to provide quality and safe patient care.

**Reasonable adjustments and work (place) modifications**

Many NHS employers already go beyond the legal requirements to implement reasonable adjustments for staff covered by the Equality Act (2010). Many NHS employers have processes to support additional staff to access work(place) modifications and adjustments to enable them to stay well and in work.

Examples of the adjustments and modifications employers are already putting in place include: changes to working hours, changes to shift patterns, specialist equipment, and, adjustments to the duties of the role. One trust uses a ‘health passport’ to identify the adjustments and modification an employee needs, which they take with them as they move roles within the organisation or under a different line manager.

The main barrier to NHS employers implementing adjustments and modifications is linked to the chronic workforce supply issues of the sector. Many trusts described challenges around the availability of suitably skilled staff to cover any changes in working hours, shifts or responsibilities. Although employers accept that the long-term benefits of modifications are significant, in some cases they struggle to implement as many modifications as they would like to due to the tension of immediate staffing needs versus the long-term sustainability of their workforce.

**Phased returns and therapeutics returns**

Many NHS organisations already facilitate phased and therapeutic returns to work, based on occupational health advice. The NHS Terms and Conditions also make specific provision for phased returns, enabling NHS trusts to pay their staff at full pay during a phased return.

**Line managers and organisational support**

The processes and provisions described above are dependent on line managers’ capability and confidence to deal with employee health issues. Many trusts have implemented support for managers to do this, through line
manager training, guidance and HR advice. Some trusts also provide tools and resources to support managers, for example, wellness action plans (WAP).

Managers in the NHS are often required to balance managing a large number of employees with their responsibility to run a clinical area. Managers are key to supporting staff to stay well and at work, and to undertaking processes fairly and consistently. Where managers are not properly equipped to deal with employee health issues, apply a rigid policy without using flexibility to deal with individual needs, or don’t have sufficient time to do this well, employees may not receive the support they require. Additionally, there are ongoing issues with stigma surrounding health issues, in particular mental health issues, which continues to hinder some employees’ willingness to discuss their health.

**Employer views - right to request work(place) modifications**

Employers felt strongly that suitable adjustments should be made available to all staff on the basis of need, not solely on the definition of disability as set out in the Equality Act 2010. Employers acknowledge that there are a range of conditions which may significantly affect employees in the workplace, and work(place) adjustments are one mechanism through which to support them. They also highlighted the moral obligations on trusts to support all their staff, to treat them fairly and demonstrate the values of the NHS in how they do this. This practice is already taking place in many NHS organisations, as described in the section above.

Employers are divided in their opinions on the proposal to introduce a new right to request work(place) modifications on health grounds. Employers in favour of the proposal outline their desire to enable more staff to stay in work through work(place) modifications and feel this right would formalise the process and make managers accountable for implementing adjustments. Employers opposed to the proposal felt that their local processes and systems to support staff were sufficient, and that the introduction of a new right may create unnecessary bureaucracy, and, without other measures, would not support organisations and managers to implement the modifications.

Both those employers in support and opposed highlighted the need for further support for NHS trusts to implement work(place) modifications, beyond the process or policy in place. Without addressing the required infrastructure,
funding and organisational cultures, the introduction of a new right to request work(place) modifications alone will not enable more staff to stay in work or return to work.

Employers strongly felt that the availability of timely and high quality occupational health advice would be needed to support managers to implement work(place) modifications in a fair and consistent way.

Employers also highlight the need to ensure the process is as simple and streamlined as possible, with clear criteria and timescales. This would benefit both employees and line managers by giving clear expectations and parameters for the process. Employers highlight the risk that the introduction of a new right to request work(place) modifications may generate an administrative burden and reduce the process to a “tick box” exercise. Employers highlight that without organisations and managers genuinely valuing the health and wellbeing of their staff, the ability for managers to decline requests may result in many requests being declined. Employers which already have effective processes for supporting staff demonstrate that a legislative process is not required to implement work(place) modifications effectively.

Employers feel that a benefit of a new right would enable more employees to discuss their health with their manager, and open up conversations in the workplace about health, challenging the stigma attached to health issues. For this cultural shift to happen, organisations would need to gain line manager buy-in to this approach and embed it as part of a wider strategic approach to health and wellbeing. Without incorporating it as part of a holistic approach to employee health and wellbeing there is a significant risk that employees will not feel valued and the process will be viewed as a “tick box” exercise by both line managers and employees.

Employers are very concerned about funding for work(place) modifications, against a background of financial constraints and workforce shortages. Not all modifications require funding, but there may be additional cost implications associated with changes to working hours and shift patterns. This concern further highlights the need to embed approaches to employee health and wellbeing in the culture of the organisation, ensuring that managers understand the benefits of work(place) modifications and are confident in dealing with request appropriately.
Finally, some employers also expressed concern that the introduction of the new right may dilute the protections for employees under the Equality Act 2010. We would welcome more guidance on how requests for work(place) modifications would interact with the requirement for employers to implement reasonable adjustments.

**Employer views – supporting returns to work**

As described above, NHS employers currently have extensive approaches to supporting staff to return to work, including use of phased returns and therapeutic returns. Employers felt the introduction of statutory guidance may have a limited impact on existing processes, and where such processes don’t already exist may become a “tick box” exercise, rather than improving their approach to supporting staff to return to work. They also expressed the need to address the current barriers to supporting staff to return to work rather than introduce additional guidance and increase bureaucracy. Employers felt that access to good quality, clear medical advice would enable them to implement returns to work more effectively. They also emphasised the need for organisations and line managers to be able to act flexibly to respond to the needs of individuals. Employers are concerned that a legislated process may restrict local processes and discretion.

**Employer views - occupational health market reform**

Employers are very concerned about the current and future availability of high-quality, timely occupational health (OH) services to support employees in the NHS. As described above, the current provision of OH services for NHS employees is already a limiting factor in organisations’ abilities to support them effectively. They are concerned about the increased demand which would be placed on already stretched OH services if a new right to request work(place) modifications is introduced. In particular employers are concerned that shortages in the OH workforce within the NHS will be exacerbated if the private sector provision is expanded, and existing recruitment and retention challenges will be aggravated.

Employers are concerned about the quality of OH services and ensuring services provided meet the needs of staff and enable managers to implement
the support needed. Some NHS organisations feel that the quality of in-house OH providers is better than external providers.

Employers support the proposal to expand the OH workforce and feel that the government should take action nationally to fund and develop the OH workforce. The national shortage of appropriately trained specialists in OH has meant employers have struggled to recruit fit for purpose staff, consequently resulting in high numbers of vacancies in their OH services. NHS employers also face difficulties with attracting new talent to the OH service, often competing with other specialties or sectors.

Nationally, more work is needed to be done to raise the profile of OH as a profession and develop a culture where OH is seen as a desirable place to work. Employers suggest that incentives could be used to encourage existing NHS staff to complete OH training or apply for OH roles. In addition, employers strongly feel greater investment is needed to develop pathways and entry routes into the OH service through training routes and providing greater opportunities for staff to develop skills as part of their CPD. More work needs to be done with connecting at a systems level with education and training providers to ensure existing training courses are fit for purpose, accessible and affordable, as well as, creating new training routes into the OH service. Trusts and education providers need to work collaboratively to ensure training courses meet the specialist needs of the NHS by generating opportunities to develop practical skills through work experience.

Employers acknowledged the important role of regulatory bodies in developing and supporting the OH workforce, expanding capacity of OH services and developing OH services that meet the needs of employers and employees. They would welcome nationally agreed quality indicators, and more guidance on how to assess the quality of OH services.

**Employer views - statutory sick pay**

All substantive staff in the NHS, employed under the Agenda for Change terms and conditions have a day one right to occupational sick pay, as set out in section 14 of the **NHS Terms and Conditions of Service Handbook**, enhancing their entitlement to statutory sick pay. Employers felt that the occupational sick pay arrangements in the NHS are supportive and provide employees with financial certainty during periods of ill health. They felt that these national
arrangements support staff to return to work, including through full pay during phased returns, as outlined in annex 26 of the NHS Terms and Conditions of Service Handbook.

As occupational sick pay includes SSP, any changes to SSP rules and provision would have a limited impact on the NHS workforce. There are a small number of NHS employees who would be affected, for example where an employee has exhausted their entitlement to occupational sick pay.

Employers felt the current SSP arrangements are confusing and would welcome simplification of the rules. Employers did not feel changes were needed to the rules around qualifying days, however they acknowledged that this is a complex issue. Employers highlighted the risks associated with introducing and accrual system for SSP, namely increases in presenteeism, reduced motivation of staff and potential issues relating to recruitment and retention. Employers supported proposals to extend SSP to employees earning below the LEL.

Conclusion

Our engagement activity with employers has demonstrated that the proposals set out in this consultation are complex with many potential unintended consequences for employers in the NHS. Many NHS employers already go beyond the legal minimums to support their employees to stay well and at work. Employers are keen to expand their support to employees, however many of the barriers and challenges they face in doing this will not be addressed by the proposed changes. Some of the proposed changes have the potential add unnecessary bureaucracy in the NHS, and would not improve the health of the NHS workforce alone. Employers would welcome additional support from the government to address the funding available to support employee ill health, as well as investment in services to prevent and manage sickness absence, including occupational health services.
Contact for further information

If you would like to discuss the content of this response further, or you require any clarification on the points raised, please contact
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