



## Sick Notes

A CHALLENGING DILEMMA - DO THEY ADD VALUE?

## Swine Flu

LOOK BACK AND LEARN

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ALL OUR PREVIOUS NEWSLETTERS AS WELL AS THE LATEST ADVICE ON H1N1 FLU CAN BE FOUND ON OUR WEBSITE: [WWW.ROODLANE.CO.UK](http://WWW.ROODLANE.CO.UK)

HELLO AND WELCOME TO THE LAST ROODLANE MEDICAL NEWSLETTER OF 2009. WE ARE ROUNDING UP THE YEAR WITH THOUGHTS ON THE SWINE FLU PANDEMIC AND CHANGES IN LEGISLATION AS WELL AS SOME WORRYING THOUGHTS WHICH CHALLENGE OUR FAITH IN THE PROMISE OF "FIT NOTES"

### sick note culture - how OH can help

THE DEBATE ON ABSENCE MANAGEMENT, SICK NOTES, AND THE PLANNED "FIT NOTES" IS AN IMPORTANT ONE FOR EMPLOYERS.

Absence has a significant cost implication for employers and a number of factors are involved. Research indicates that management has a greater effect on absence levels than illness itself does and there are a number of ways in which Roodlane can help you with this, from our InForm absence tracking service with case management to management training and wellness initiatives.

The problems of sick notes were highlighted in a full page article in a very recent edition of "GP" magazine looking at the dilemma a doctor feels when asked to provide a note for a patient they did not see when they were (reportedly) ill.

The scenario is that a patient attends his GP requesting a sick note for an illness he had two weeks earlier. The patient has fully recovered, but tells his family doctor that he will lose his job if he does not provide a sick note for his employer, and that he would be unable to support his young family, who are all on the doctor's list.

This feels like emotional blackmail, so what does the doctor do?

Three points of view are offered in the article: the first is the GP's point of view, the second a GP medico-legal advisor and the third a member of a Royal College of GP's patient group.

The medico-legal advice is precise and correct. A med 3 (standard sick note) can only be issued if the doctor saw

and examined the patient themselves during the illness. So the doctor cannot do that. A med 5 (retrospective sick note) can only be issued if the doctor has a written report from another practitioner who did see and examine the patient at the time. The doctor cannot do that either.

What is extraordinary about this article from the point of view of an employer is that the GP states that she is the patient's advocate and concludes that in the majority of cases, since she cannot prove that the patient wasn't ill, she will believe them and issue a sick note. The patient representative takes the same view.

That means that the doctor will sign a document she knows is not true creating the "proof" that she knows does not exist.

When a leading General Practice magazine can publish this and a doctor goes into print saying she will lie for her patient it is time for sickness certification from GP's to end. Can this change with 'fit notes'?

Assessment of fitness for work should not sit with professionals whose role is primarily that of patient advocate but belongs with Occupational Health professionals where there is no conflict of interest. If you would like to know more about how Roodlane can help you monitor and manage sickness and help with manager training contact [simon.hawkins@roodlane.co.uk](mailto:simon.hawkins@roodlane.co.uk)



### swine flu (almost) in retrospect - what lessons can we learn?

THE SWINE FLU PANDEMIC HAS LED TO A MASS OF ADVICE FROM DIFFERENT AGENCIES, SOMETIMES CONFLICTING; HUGE AMOUNTS OF TAMIFLU BEING DISTRIBUTED WITHOUT CLINICAL ASSESSMENT (WITH THE RISK OF RESISTANCE) AND A MULTIMILLION POUND VACCINATION PROGRAMME WHICH HAS HAD POOR UPTAKE.

The illness itself has been mild for the majority (although not all) of patients and its management expensive. It has been widespread and children have been an important transmission vector with figures showing that 1/3 of children in some areas and 15-20% across the country have been infected.

Vaccine uptake has been quite poor. As of early December 11.7 million doses of the 18 million stockpile had been delivered to GPs but only 1.6 million doses had been given to at risk patient - 18% of that group. Healthcare worker vaccination in England (uptake has been higher in Scotland) has been less

than 20%.

Interest in the pandemic is now rapidly waning as the feared second wave has not had serious effects.

As the number of cases falls it is a good time to reflect on the lessons learned for businesses. We have been lucky, this was not the virulent pandemic feared, but it could have been. And there could be one in the future. There has been a learning curve on communication and response. Did the business community over react? Are we prepared for future infectious disease episodes after the warnings of SARS and swine flu?

The business establishments we work with responded quickly and appropriately adjusting their reaction on a frequent basis to safeguard their staff and stabilise their business. Many lessons were learnt, including the fact that some antiviral hand rubs are highly flammable (someone really did set their hands on fire), and that careful hand washing and cleaning measures are invaluable. In particular the value of good sickness reporting systems was very evident.

Whilst we should hope that there will not be another pandemic, we should also consolidate the knowledge acquired from this one over the coming months.

# employment law relevant to occupational health – an update

## ASSOCIATIVE DISCRIMINATION - AN EXTENSION OF THE DDA.

On December 1st 2008, the European Court of Justice (ECJ) has held that the European Equal Treatment Directive (EET Directive) also covered direct discrimination and harassment against an employee on the grounds of their association with a disabled person. A recent employment appeal tribunal (UKEAT/0071/09) has interpreted this more widely and this extends the DDA to include direct discrimination “by reason of the disability of another person” and also harassment for a reason “which relates to the disability of another person.”

### The Coleman Case - Coleman v Attridge Law, European Court of Justice

Ms Coleman was a legal secretary and main carer for her disabled son. When she returned from maternity leave she had not been allowed to return to her previous role and had less flexibility in terms of her working hours. She also alleged that she was subject to abusive and insulting comments about both her and her son. All of the allegations were based on her association with her son. The case was upheld by the ECJ on the grounds of “associative discrimination.”

### Why are the ECJ and EAT decisions important?

The EAT outcome has wide-ranging implications. The decision benefits not only carers of disabled people,

but also those *associated with* a disabled person, and covers direct discrimination or harassment based on the disability of *any third party*.

Nearly 3 million working age people are carers and they are now protected in law under the DDA even though they are able bodied, on the grounds of their association with a disabled person ('associative discrimination').

### What should employers do?

Employers should review any equality policies to check they cover associative discrimination.

Employers may have to consider requests for flexible working under the reasonable adjustments provisions of the DDA if the request is made by a carer of a disabled person.

Roodlane Medical has incorporated these changes into the advice that we provide to clients in Occupational Health reports and if you would like to discuss the implications further then please contact your lead Occupational Health Physician or [hannah.hawkins@roodlane.co.uk](mailto:hannah.hawkins@roodlane.co.uk)

References: Coleman v Attridge Law, European Court of Justice, July 2008; EBR Attridge Law LLP v Coleman (2009) UKEAT 0071/09

## it's not just what you eat – it's when you eat it that counts

### OBESITY IS A GROWING PROBLEM IN THE UK WITH INCIDENTS OF 24% AMONGST ADULTS RECORDED IN AN NHS HEALTH SURVEY FOR ENGLAND IN 2007.

Diet books and fads are all around us, and every year more come out post Christmas as people battle to shake off the effects of extra seasonal fare.

A new study gives an interesting twist on the problem by suggesting that when you eat may be very important in managing weight.

Our bodies have circadian rhythms (circadian means about a day – hormonal cycles that govern a number of body functions).

Studies have shown a close relationship between our circadian rhythms and metabolism levels.

Another piece of research has shown that mice fed during sleep time gained more weight than mice fed during waking time even though the amount and type of food was the same.

The essential nature of sleep in supporting our health and wellbeing is something that is becoming increasingly recognised. This interesting development of a body of evidence suggesting that when we eat will affect the amount of weight we gain further underlines the importance of regular self care through the day from breakfast

through to sleep.

At Roodlane we are always working to educate your employees as part of our drive towards wellness in business and this new research suggests that more education around sleep, diet and healthy self care routines gives a direction in which we have been taking our health education.

If you would like to discuss how this could form part of your wellness policy for your organisation in the coming year please contact [hannah.hawkins@roodlane.co.uk](mailto:hannah.hawkins@roodlane.co.uk)



**IT IS BUSINESS AS USUAL OVER CHRISTMAS AT ROODLANE ALTHOUGH WE HOPE MANY OF YOU WILL BE ABLE TO TAKE A FEW DAYS AND ENJOY A PEACEFUL BREAK. ALL OUR VERY BEST WISHES TO YOU AND YOUR FAMILIES FOR AN EXCELLENT CHRISTMAS AND A PEACEFUL AND PROSPEROUS NEW YEAR.**

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