



Phased Return to Work NEU guidance for members in England, Wales & Northern Ireland

A phased return to work is a way of enabling employees to return to their duties in a gradual way following illness or injury. Phased returns arise from recommendations made by occupational health physicians or GPs. If you return to work on a phased basis you will work a reduced number of hours at first, followed by a gradual increase in workload until you reach your normal number of hours.

Although employers are not obliged, except by way of reasonable adjustment, to offer phased returns, they are regarded as good practice. Some employers offer better phased return arrangements than others. The NEU believes that all school and college staff should be entitled to benefit from flexible and supportive return to work policy following a period of illness or injury.

Employers who fail to facilitate a phased return when it has been recommended by a GP or occupational health physician can find their employees are at a very real risk of going back on sick leave or, if a decision is made to dismiss, of having a good claim for unfair dismissal.

In what circumstances would I qualify for a phased return to work?

Phased returns are normally offered to employees returning from long-term absences. However, those returning from absences of a shorter duration can also sometimes benefit from such arrangements.

Is it for me to ask for a phased return?

A recommendation for a phased return to work might come from your GP (who can tick a box on the 'fit note') and/or your employer's occupational health provider (OHP) who will produce a medical report. In either case, it is essential that any recommendations made about a phased return are discussed between you and your employer, and a written agreement is produced, clearly explaining how your return to work is to be managed in the light of the recommendations. You can take a union representative with you to the meeting to discuss the details of arrangements, and remember that the purpose of the meeting is to organise the best terms so that when you do return to work it will be a permanent return.



How long do phased returns normally last?

Typically, phased returns may last for around four weeks, although in some cases they can continue for longer, depending on the conclusions of the medical report. If you believe your phased return will need to be for a longer duration than your employer will allow, speak to your GP and/or your employer's OHP.

Can I see the occupational health report before it is sent to my employer?

Yes. Under the Access to Medical Reports Act 1988, you have the right to see medical reports written about you for employment or insurance purposes. You can exercise this right, either before or after the report is sent, and you can add your own comments to the report if you disagree with any of its contents; you can even withdraw your consent to the release of the report, although you should seek union advice before taking this step. FAQs on medical reports may be found on the union website at: neu.org.uk

What should I be paid during the period of my phased return to work?

Practice varies. Some employers pay the employee their full-time salary but usually limit the facility to a specific period, eg four weeks, after which time they may only be paid for the actual hours worked. This approach benefits both employer and employee, as it is likely to encourage the employee to return to work rather than remain on sick pay. Other employers only pay employees for the hours worked from the outset, plus any remaining entitlements to sick pay. This approach is endorsed by HM Revenue & Customs (HMRC) – more details are available at: hmrc.gov.uk/employers/ssp-faq.htm You are advised to clarify with your head teacher/principal and employer's human resources services how you will be paid during this period as well as the details of the type of work you will be doing. Your head teacher will also need to notify the payroll department to ensure that the necessary arrangements are in place.

What if I do not want to have a phased return to work?

Your employer cannot unilaterally impose a phased return to work. The terms of your return are subject to your agreement. In any event, a variation in your contract of employment must be in writing.

What happens if my employer's occupational health doctor thinks I am fit for work, contrary to my GP's advice, or vice versa?

Your employer may choose whichever advice they prefer to rely on, but this may not be in your best interests. For example, an employer may be persuaded by advice which concludes that you are not fit to work and may not be fit for some time, thus increasing



the likelihood of dismissal on ill health grounds. If a return to work would not hinder your recovery and/or present a health and safety risk, the best option would be to show a willingness to return to work, albeit on reduced hours.

Am I entitled to full pay while on a phased return to work?

There is no automatic entitlement to full pay while on a phased return to work. Whether or not full pay is a reasonable adjustment for your employer to make will depend on the circumstances. Even if your employer decides that it can pay you only for the days when you work, any outstanding occupational and/or statutory sick pay may be used to top up your earnings during your period of phased return.

Can my entitlement to holiday be used to top up my salary during a phased return to work?

In 2009 the European Court of Justice (ECJ) held that workers on sick leave continue to accrue annual leave and that, if workers are not given the opportunity to take annual leave during this time, they should be permitted to carry it over to the next leave year. In the light of this decision, you may continue to accrue statutory holiday entitlement (currently four weeks) during sick leave and you may ask to use your statutory holiday entitlement to supplement any shortfall in pay arising from the temporary reduction in your working hours.

If you work in a school, your employer may object to this on the basis that any accrued statutory holiday will be used up during school closure periods (which normally amount to 13 weeks in each academic year).

What should I do next?

If further advice is needed, contact your NEU workplace rep in the first instance. If there is no NEU rep in your workplace, or the peripatetic nature of your employment makes contact with a workplace rep difficult, contact the NEU Adviceline in England on 0345 811 8111 or NEU Cymru in Wales on 029 2046 5000.

Further contact details may be found at: neu.org.uk/contact-us

Further information

More detailed advice on these and other sickness absence issues can be found in the following NEU guidance documents, available at: neu.org.uk

- Teachers' Sick Pay and Sick Leave Entitlement
- Tackling Stress
- Fit Notes
- Model Disability Leave Procedure