Fraud Counts Newsletter

June 2022

Working Whilst Sick

In this edition of Fraud Counts, we explore one of the highest reported frauds that we deal with, abuse of sick leave.

Abuse of sick leave is one of the more frequently reported types of fraud within the NHS.

Abuse of sick leave happens when someone takes paid sick leave and they are not really sick, or at least are not so unwell that they should refrain from work.

Abuse of sick leave may amount to a criminal offence where the person on sick leave has stated that their illness leaves them unable to work and it can be proved that they are undertaking an activity that is inconsistent with that illness.

Most commonly, that inconsistent activity is working in another job whilst off sick, often referred to as "Working Whilst Sick" and happens when a staff member is signed off from their NHS role, but then works somewhere else during their sick leave.

The staff member is effectively being paid twice; receiving sick pay from their primary role, and being paid for the secondary work they are undertaking. There is nothing wrong with having more than one role, many people do, but staff members need to gain prior approval and declare such interests in line with local polices first.



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All staff members must comply with the Working Time Directive Regulations to ensure that no one works when they are too tired to do so safely.

In order to protect staff we advise staff to:

✓	Read and follow relevant policies in place at their organisation. These should include standards of business conduct, sickness management and declarations of interest.
✓	Declare secondary employment with their line manager before they take on any new roles; prior written agreement is necessary.
✓	Complete a declaration of interest form if their secondary role potentially produces a conflict of interest with their NHS role (refer to the Standards of Business Conduct Policy for more information).
✓	If signed off by a doctor as unfit to work in their NHS role, they should tell their GP about any other work they are doing. The GP can then advise whether it is safe to attend their second place of work and can capture this on the fit note. If the fit note states that they are unfit to work, this covers any work.
✓	Obtain written permission from their NHS employer if they wish to seek alternative paid or unpaid employment whilst on sick leave.
✓	Do not work whilst sick without prior agreement. Without prior agreement, staff should not undertake any employment, including voluntary and self-employment, training, or study inside or outside the NHS whilst sick from their NHS role.
✓	Consult with their line manager and/or HR representative if in doubt about whether they need to declare work.

Suspicions of Fraud and Bribery may be reported anonymously by telephoning the NHS Reporting Line in confidence - 0800 028 40 60 or www.reportnhsfraud.nhs.uk



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Prevention and detection



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- Health bodies have policies and procedures for employees undertaking secondary employment.
- The employee code of conduct includes a requirement for staff to inform their manager of any secondary employment.
- A standard clause can be included in contracts of employment to prohibit employees from undertaking any other employment without their employer's consent. This may not be applicable for all staff, for example those working part time. If employees are allowed to carry out other work, they should still be required to inform their manager.
- If unpaid work, paid work, study, or training is authorised, managers should put this in writing to the employee and a copy of the letter should be emailed to the HR manager.
- Managers should ask employees during the return to work interview whether they have done any unpaid work, paid work, study, or training during the period of sick leave and record their answer on the sickness/absence notification form sent to payroll.
- Return to work forms to include a clear declaration: Employee declaration: "I confirm that during the period of being unfit for work I did not undertake any unpaid work, paid work, study, or training which was not approved in advance and in writing by my line manager."



You may be aware of someone who is currently or has been working whilst off sick from your organisation; for example, you may have seen them working, or seen it identified on their social media.

Anyone can report their reasonable suspicions of NHS fraud, in confidence, to the NHSCFA on 0800 028 4060 or at https://reportfraud.cfa.nhs.uk/. Staff can also report or discuss their concerns with their Local Counter Fraud Specialist.

The Public Interest Disclosure Act (PIDA) protects workers from detrimental treatment or victimisation from their employer or co-workers if, in the public interest, they blow the whistle on wrongdoing. **By reporting suspicions, you can help the NHS put money back into patient care and bring offenders to justice.**

Potential consequences if found to have worked whilst sick

Action could be taken under the local disciplinary procedures. Abuse of sick leave is an example of fraud. Fraud is classed as gross misconduct which means that employing organisations may dismiss employees found to have misused sick leave.

Professional body notification and potential investigation which could impact on registration and future employment.

A criminal investigation could also be instigated leading to prosecution in a public court.

Recovery of any sick pay found to have been inappropriately claimed.

NHS absence rates in November 2021

The overall sickness absence rate for England was 5.6%. This is slightly lower than October 2021 (5.7%) and higher than November 2020 (4.9%).

Reason for sickness absence

Anxiety/stress/depression/other psychiatric illnesses is consistently the most reported reason for sickness absence, accounting for over 561,800 full time equivalent days lost and 25.7% of all sickness absence in November 2021.

This has increased slightly since October 2021 (25.1%).

The above figures have been sourced from https://digital.nhs.uk/data-and-information/publications/statistical/nhs-sickness-absence-rates



If you have any suspicions or concerns,
You can call us anonymously on

0800 028 40 60

POWERED BY **CRIMESTOPPERS**

Or search 'NHS Fraud' online for more information

The NHS Counter Fraud Authority leads on fighting fraud, bribery and corruption in the NHS and the wider health group

NHS Counter Fraud Authority

Department of Health & Social Care

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Working whilst sick case examples

	The subject had not declared any secondary employment to the Trust. A social media post was seen of the subject working on a ward at another Trust. The subject was signed off sick with a bicep injury and continued to work with the secondary employer and received sick pay totalling £6,119.20. She failed to attend any sickness review meetings and was found to be working elsewhere on the dates of meetings. Criminal prosecution resulted in a 12 month community order sentence, five days of rehabilitation activity requirements (aimed to reduce the prospect of reoffending), compensation of £6,119.20 payable to the Trust (which is currently being recovered), and court costs of £220.00.
	A member of Mersey Care staff had reported sick due to an alleged assault at work. She remained off work for two years until her employment was terminated on ill health grounds. A month after going off sick she commenced a BNURS (Hons) Mental Health Nursing Degree programme at The University of Manchester. The subject was sentenced to a 16 month imprisonment order suspended for two years and required to undertake 200 hours of unpaid work and a 20 day rehabilitation order. A Compensation Order was made for the full amount of the overpayment - £40,533.31. Costs of £3,000.00 were also awarded, to be added and paid following compensation. The case was referred to the NMC for regulatory investigation.
	A Gynaecologist secretly conducted locum work whilst firstly suspended and later whilst on sick leave. He failed to declare that he had secondary employment and submitted sick notes on three separate occasions, saying he could not work because of stress. But the doctor, who earned close to £100,000.00 a year, went on to do locum work worth about £69,000.00 with three NHS trusts in England while still earning more than £29,000.00 from his employers in Wales. He was ordered to pay £73,000.00 back to the NHS within six months, an order which he appealed. After he failed to repay it, he was jailed for two years.
	While off sick from her full-time job, X worked with a private GP as a locum nurse. In a year's absence because of a back-related medical issue, X had assisted with fitness tests for the Ministry of Defence, as well as working at a local private hospital. During all this time, she was receiving sick pay from her employer. The health body not only paid X's salary but also had to pay for locum cover for her post. When X was confronted, she claimed not to know that she was not allowed to work elsewhere. X lost her job, gained a criminal conviction, had to appear before a professional disciplinary committee and was ordered to pay back the money she had stolen.

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OUR LOCAL COUNTER FRAUD TEAM

Our Local Counter Fraud Specialists are fully accredited with the University of Portsmouth. We aim to prevent and deter fraud and hold those to account who commit fraud against the NHS. Counter Fraud Services are provided by ASW Assurance (www.aswassurance.co.uk), an NHS consortium providing counter fraud and internal audit services to NHS and healthcare organisations. If you would like to know more about our Counter Fraud work or arrange for your department to receive a Fraud Awareness Presentation, please contact your Local Counter Fraud Specialist (LCFS) below.



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