

PrivateEdge

## Guide to Managing Sickness Absence

The purpose of this note is to set out some key legal and practical issues to consider when managing absent employees, to help ensure that any legal risk to your business is minimised.

### Issues to consider:

- Providing the relevant information - section 1 of the Employment Rights Act 1996 requires you to provide employees with particulars of "any terms and conditions relating to incapacity for work due to sickness or injury, including any provision for sick pay". This information can either be contained in the employee's written statement of particulars of employment, or the statement can refer the employee to "the provisions of some other document which is reasonably accessible to the employee", such as a staff handbook or sickness absence policy.
- What is the employee entitled to receive? Statutory and/or contractual sick pay?
- Why is the employee ill and is there any indication it may not be genuine? (This may involve seeking a medical report from the employee's GP, a consultant or from an Occupational Health service).
- Was the employee due to be on holiday when the employee became ill? If so, the employee may be permitted to reschedule their holiday.
- Where the absence is related to a disability, whether any reasonable adjustments may need to be made to the role or workplace to facilitate a return to work – common adjustments include for example a phased return, varied start and finish times, or changes to duties.
- Whether the length or frequency of absence has become a significant problem.
- Is dismissal a relevant concern? What process needs to be followed to ensure any dismissal is fair?
- If the employee appears unable to work and unlikely to return, you should consider whether they would qualify under any permanent health insurance (PHI) or ill-health pension provisions that are in place, and should facilitate the employee contacting the relevant provider.

### When an employee calls in sick

- Clear guidance should be available so that employees know who they need to telephone when they are unwell and, for example, by what time they need to call. Line managers will usually be the first point of contact for employees calling in sick. In most situations it will be appropriate to ask the employee the reason for absence and the likely date of return.

### When an employee is off sick

- Employees need to provide evidence of their incapacity to work. This usually consists of a "self-certification" for absence of seven calendar days or fewer, and a doctor's certificate, which were known as "sick notes", but are now known as "Statements of Fitness for Work", or "fit notes".
- It is important to keep in regular reasonable contact with an employee who is off sick. Keep notes of calls and copies of correspondence.

- Where an employee has been continuously absent for more than four weeks, or takes frequent periods of short-term sick leave for the same condition, you should take steps to obtain information about the employee's health. This could take the form of a letter from their GP, a consultant's report or a referral to Occupational Health. Information from an independent specialist who has not previously been responsible for the employee may be seen as more reliable than information from an employee's GP.

## Return to work

- You may want to investigate the reason why the employee was absent. It is important to be careful in taking steps to look into sickness absence and to avoid making assumptions about the employee. The appropriate way to begin is to hold a return to work interview.
- A return to work interview can be very informal. The very act of holding return to work discussions with employees can help to reduce frequent short-term absence. The approach to return to work interviews must however be consistent.

## What if the sickness absence becomes a problem?

- Most absences can be managed informally.
- However, when the absence starts to cause a genuine difficulty for the employer and team members, more formal steps may be necessary.
- This is likely to require the obtaining of medical information and speaking to the employee about prognosis, return to work and timescales.
- Employers often find it a challenge to deal with an employee who has been off for a long period for ill-health. However, it is better to tackle the problems early and avoid jumping to a dismissal stage.

## Long-term absence

- In a formal meeting to discuss long-term absence, you are likely to explore:
  - When the absent employee will be returning to work.
  - Medical assessments which are required and the next steps under the sickness absence procedure.
  - The pressures that the absence is creating, often for team members. How long can this continue?
  - Are there any steps which could be taken to assist the employee to return to the workplace?
  - Is there a need to agree a phased return to work, perhaps on shorter hours or reduced days for an initial period?
  - Is it clear whether the employee is 'disabled' and also if there are other steps that can be taken to help facilitate a return to work and that would allow the employee to continue in work?
- At least one further meeting would be called for in cases where dismissal is contemplated.

## Short-term absence

- Short-term regular absence is more difficult to identify. It is often hard to establish if there is a problem until it becomes very frequent or fits a pattern.
- Are the absences genuine? Is there some other cause for the absence or another underlying medical problem causing the absences?
- In a meeting to discuss short-term absence, you are likely to explore:

- What problems, pressures and additional strain the absence is causing for you. What is the impact on teammates or the wider business?
- Whether these absences are likely to continue? Are there any steps you can take or support that can be offered help reduce the absence to an acceptable level?
- Is there any underlying disability? Are there any reasonable adjustments that could be made?
- Is it right to be giving the employee a formal warning in relation to attendance? Make sure a fair process is followed for any warning to be issued. Set targets for improving attendance and what you will have to do if those targets cannot be achieved over a fair time period.
- Keep your decisions and actions consistent with the treatment of other staff in similar positions.
- At least one further meeting would be called for in cases where dismissal is contemplated.

## Dismissal

- If things reach a stage where it is clear, on medical evidence, that the employee will not be able to return to work or that any return date is not certain and not for the foreseeable future, then you must weigh up the next steps.
- Dismissal should really be the last resort. Make sure that you consider other steps to get the employee back to work or to improve short-term absence.
- Make sure you check carefully as to what, if any, contractual entitlements could be relevant to the employee, including sick pay, permanent health insurance or ill health pension benefits. Failure to explore them may give rise to claims for breach of contract.
- If there are no realistic alternatives to dismissal, make sure that you have properly consulted with the employee and considered both the current medical information and any suggestions raised by the employee. Ensure that you hold meetings with the employee for this purpose (ideally, at least 2).
- Before dismissing, make sure the real, genuine reason for dismissal is ill health incapacity or unacceptable levels of sickness absence. It is very important to have up-to-date medical evidence, particularly for long term sickness cases, however it is helpful even for frequent short-term absence.

**Kennedys**

Legal advice in black and white

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