

# Managing Sickness Absence

**Working days lost due to sickness absence pose significant problems for any organisation. It is important to manage sickness absence effectively to avoid not only liability for unfair dismissal and disability discrimination, but also to maintain morale and to avoid a culture of high sickness absence developing.**

## The Contract of Employment

1. Ensure that your contracts contain full details of your employees' sick pay entitlement, the notification procedure they should follow if absent from work and the evidence they need to provide.

## Policy on Sickness Absence

2. In addition to your contracts of employment, it may be wise to introduce a sickness policy. This will include such matters as:
  - how, when and to whom employees should communicate sickness absence;
  - what evidence is required for absence over a particular period;
  - the ability to withhold Company sick pay and Statutory Sick Pay if the notification procedure is not complied with, if evidence is not produced or if you have doubts about whether the illness is genuine;
  - the right to deduct from wages Company sick pay paid to an employee when you subsequently discover their illness was not genuine;
  - confirmation that a GP's certificate ("fit note") is not necessarily conclusive evidence of incapacity to work;
  - the ability to request access to medical records, to obtain a report from the employee's GP (subject to the provisions of the Access to Medical Reports Act 1988), or from an independent specialist;
  - return to work interviews;
  - conduct expected of an employee on sick leave;
  - the relationship between sick leave and holiday entitlement;
  - the consequences of breach of the notification procedure or exploitation of the Company sick pay scheme;
  - the right to terminate employment during the sick pay entitlement period.

## Monitoring and Records

3. It is vital to monitor and record the absence levels within your organisation to enable you to:
  - identify when absence is becoming a problem for a particular department or employee;
  - comply with the record keeping requirements imposed on employers by the Statutory Sick Pay Scheme;
  - effectively deal with an employee who is developing a pattern of persistent sickness absence.
4. For absences lasting less than 7 consecutive days, all employees should be asked to complete a self-certification form for retention on the personnel file. For absences of 8 days or more, GP certificates ("fit notes") should be provided.

## Back to Work Discussions

5. Where possible, a back to work interview should be conducted for employees returning after a period of absence where either the nature of the illness (i.e. its seriousness, persistence or if it is considered to be malingering) or the length of the period of absence, warrant it. The discussions should be confidential but a record should be retained on the personnel file. The employee should be informed that return to work discussions do not constitute action under the disciplinary or capability procedures.
6. The aim of the discussion will be to:
  - welcome the employee back to work and ensure they are now fit for work;
  - ascertain basic information regarding the nature of the illness;
  - establish whether there are any underlying causes for the absence;
  - discuss the employee's absence record and the possibility of future absences;
  - demonstrate that the employee is valued and can make a contribution to the organisation;
  - ascertain if any support is required; **and**
  - communicate acceptable attendance levels.

## Training your line managers

7. Your line managers should understand the importance of following and enforcing the notification procedure for all employees. A policy or procedure will be of little use if it is honoured more in the breach than the observance.

## Sickness absence and Dismissal

8. A dismissal for persistent sickness absence may fall within any one of 3 potentially fair reasons for dismissal:
  - conduct;
  - capability; **or**
  - some other substantial reason.

## Conduct dismissals

9. If an employee has failed to comply with your notification procedure, or there is evidence of fraud, it may be appropriate to invoke the disciplinary procedure. Revise your procedure to ensure that fraudulent sickness absence amounts to gross misconduct. Do not assume, however, that an employee who has not called into the office is deliberately ignoring your procedures. There may be a good reason, for example, the employee has been admitted to hospital in an emergency.

## Capability dismissals

10. If an employee is genuinely ill but the level of his/her absence is becoming a problem, follow a separate capability procedure. This procedure should:
- highlight the level of absence;
  - investigate the reason for absence;
  - establish the root cause and what can be done about it;
  - seek improvement in attendance;
  - give warnings as to what might happen if attendance cannot be improved.
11. The procedure should not be disciplinary in nature but the Employer should seek to balance fairness and tolerance of the employee's problems with its requirements to have the job done. Do not jump to conclusions and obtain medical evidence where necessary. Above all, act promptly and consistently. The law will expect an employee with lengthy service to be supported over a longer period of time than an employee who has worked for the employer for only a short period of time.

## Discover the true medical position

12. You must take steps to inform yourself of the employee's true medical position. This can be done by:
- talking to the employee;
  - obtaining a medical report from the GP/Consultant;
  - asking the employee to see the in-house doctor; **or**
  - instructing an independent specialist.
13. The Access to Medical Reports Act 1988 gives employees a right of access to a report obtained from their own GP or treating Consultant. The employee must give their consent before any medical report is obtained, is entitled to see the report before you and can agree, amend or alter that report. You must inform the employee of these rights when obtaining their consent. Note that these rights do not apply to reports from non-treating specialists.

## When will it be fair to dismiss?

14. Having exhausted your capability procedure you should consider the following before dismissal:
- the nature of the illness and its likely duration;
  - the nature of the job;
  - your need to have the work done and need for a replacement;
  - the employee's length of service;
  - the effect on other employees;
  - all other circumstances including the size of your organisation; **and**
  - the Disability Discrimination Act 1995 (see Client Information Sheet 5) i.e. the requirement to consider reasonable adjustments which would assist the employee to effectively perform their role or the existence of any suitable alternative roles.

This checklist is provided for your general information only and does not seek to set out the employment legislation in this area in detail. If you have any queries or wish to discuss specific circumstances, please do not hesitate to contact one of our employment team who will be happy to assist.

## Contact

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