

STARFORD

HR & Legal Services

Managing Sickness Absence

Agenda

- Introduction
- Short-term sickness absence
- Case Study Part 1
- Long-term sickness absence
- Problem Areas
- Case Study Part 2
- Legal Risks

Introduction

- Estimated £17bn to UK economy
- Short term v long term absences
- Effective Policy
- Effective monitoring
- Consistency of approach and training

Short-term absences

- Effective monitoring to spot patterns emerging
- Bradford Factor ?
- Is there an underlying medical condition / disability?
- Is it attributable to a problem with a colleague or their workload, for example?
- Talk to the employee!
- **3 stage process – invite to first formal meeting**

First formal meeting

- Write and tell them why you want to have a meeting.
- Discuss reason for absences – are they linked?
- Discuss impact on colleagues and the business
- Establish likelihood of future absences
- Explore any reasonable changes that might assist attendance
- Is a formal warning appropriate at this stage?

Is it genuine?

- Evidence that can be requested
- If dishonest, likely amount to misconduct / gross misconduct
- Doctor's note is NOT necessarily conclusive
- Avoid making snap judgments re trips away / leisure activities
- Conduct proper investigation with medical evidence and consider the potential for disability discrimination under the Equality Act 2010.

Dismissal

- Normally at least 2 meetings will have taken place first
- Write to employee stating levels of absence and impact on business, steps taken to assist and medical evidence obtained
- Meeting to allow representations
- Right to be accompanied
- Right of appeal
- What are the risks?

Case Study 1

Long-term sickness absence

- What do you mean by long term?
- Don't let the matter drift – you have the right to stay in touch so make sure that you do so.
- Keeping in contact – what is reasonable?
- Need to have difficult conversations at early stages but remain supportive where possible.
- **3 stage process – invite to first formal meeting**

First formal meeting

- Likely date of return
- Arrangements for future contact
- Is there a disability / any adjustments needed?
- Medical evidence required? If so deal with issue of consent ASAP
- Return to work programme? E.g. phased return, working from home, reduced duties?

Investigate cause and likely length of absence

- Is there a work-related issue?
- Is medical/occupational health evidence required?
- Specific issues / questions for medical expert to address
- Compliance with medical report – are the suggestions/adjustments reasonable?
- Access to Medical Reports Act 1998

Further meeting(s)

- Discuss and consult with employee throughout
- How many meetings are appropriate will depend on particular case
- Has anything changed / is further medical evidence required?
- Is there a likely return to work date?

Arrangements for meetings

May need to make adjustments to the procedure itself e.g.

- Location
- Right to be accompanied
- Longer notice of meetings
- More rest breaks

Failure to attend

- A common problem
- Is it the first time or a persistent problem?
- Consider requesting written representations instead
- “best available evidence”
- Reasonableness

Possible adjustments / redeployment

- In consultation with employee BUT don't just rely on their suggestions
- Is there another job that might be more suitable?
- Question of whether employee is too ill to work is generally a decision for the employee and the medical expert
- Question of whether employee is capable of performing their full duties safely is a decision for the employer
- Can you medically suspend? What about ill health retirement?

Dismissal

- Should have had **at least** 2 meetings by this point
- Write to employee warning them of risk of dismissal and details
- Right to be accompanied
- Representations
- Adjourn if any material new issues identified
- Dismissal with notice + accrued holiday. Does notice need to be paid?
- Appeal

Problem areas

- Injuries at work
- Pregnancy-related illness
- Long Covid?
- Holidays
 - Accrual
 - Carry over
 - Sickness whilst on holiday? What happens now?

Case Study 2

Legal risks

- Personal injury
- Unfair dismissal but only if employee has 2 years service
- Disability discrimination claim
- Pregnancy-related claims
- Remedies

Take-aways

- Monitor absences – spot patterns early
- Be supportive
- Be consistent – follow policies
- Keep in contact

Questions?

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