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3HR Legal Weekly

Employment

Managing Persistent, Short-Term Sickness Absence

Businesses regularly struggle with employees' short-term absences as they are usually without notice and very often leave organisations struggling to provide an effective service. In addition, if an employee is repeatedly absent for short periods, this is likely both to undermine the individual's own performance and to be disruptive to colleagues and the business generally.

Employers do not have to put up with an employee's persistent absences indefinitely, but it is important to follow a proper procedure to prevent an employee claiming unfair dismissal or discrimination. We set out below the main points to follow when dealing with short-term absences:

STEP 1: RETURN TO WORK INTERVIEWS - These should be carried out by the line manager with the employee after every instance of absence. Written evidence of the interview should be kept in case the level or frequency of absences continues and the formal disciplinary procedure is necessary. The interview provides an opportunity to explore any particular problems the employee may have and lets them know that their absence was noticed and that they were missed.



STEP 2: INVESTIGATION - Where an employee is persistently off sick for short periods of time, a full investigation should be carried out with the line manager gathering as much information as possible about the nature and causes of the absence.

STEP 3: FORMAL ABSENCE REVIEW MEETING - Following the initial review and investigation, the next step will normally be to conduct an absence review meeting with the individual. The purpose of the meeting is to be constructive and so it should be carried out in a positive manner. The employee should be helped and encouraged to understand that their absence levels present a problem to the business, and the meeting should then explore the reasons for the absence with the aim of identifying practical steps that might be taken to reduce absence levels in the future. If the process reveals some personal problems, the employee's views on how they're attempting to solve them should be obtained. The employee should be allowed time to implement a proposed plan of action, and should be kept under review.



STEP 4: PROFESSIONAL MEDICAL ADVICE - If there is uncertainty about the nature and causes of the absence it may be appropriate to seek expert input before proceeding further.

STEP 5: ACTION - If an underlying medical explanation is uncovered, the case should be dealt with accordingly (with the aim of addressing the medical issue in order to help improve attendance). Ultimately, if there is no resolution to the sickness problem, any dismissal will be on the grounds of capability, after a full capability procedure has been followed. If, on the other hand, no medical explanation can be found, a disciplinary process should follow. Where disciplinary action is taken, the employee should receive a first and then a final written warning prior to dismissal being considered, so that the employee has the opportunity to improve his or her attendance record. As with all dismissals, the employee must be given the opportunity to appeal the decision to dismiss.

RED FLAGS - Great care must be taken when dealing with sickness absence during pregnancy as pregnant women are protected by law from being subjected to detriment, directly or indirectly, on grounds of pregnancy. For this reason, absences related to pregnancy should be disregarded for the purposes of absence management. Further, where an employee suffers from a disability, employers should be aware of their obligation to make reasonable adjustments to the employee's workplace or working arrangements. Seeking legal advice, as well as obtaining a specialist medical input, is strongly advised in cases where an employee is (or may be) disabled.

If you would like further information or advice about managing employees' absence, or any other Employment Law or HR matter, please contact us on 020 7194 8140.

Emma Mursell
Solicitor
E: emma.mursell@3hrlegal.com



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The registered office is New Broad Street House, 35 New Broad Street, London EC2M 1NH, registered in England and Wales no: 08198795
Tel: 0207 194 8140 Web: www.3hrlegal.com