

Briefing Note: Sickness Related Dismissals

An Introduction to the Briefing Note

This Briefing Note sets out the steps your business should take if you are contemplating dismissing an employee for a sickness absence-related reason. Although you can fairly dismiss an employee for a sickness-absence related reason, it is important to follow the correct procedure. This briefing note should not be relied upon as legal advice and you should contact us for advice on your specific circumstances.

Briefing Note
June 2011

Summary:

An introduction to the law on dismissals for sickness absence.

For detailed advice on all employment law matters please contact:

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Review and retain the correct documentation

- If your business has a sickness or absence policy make sure you check (and comply with) it.
- Review the relevant provisions in your employee's contract of employment.
- Keep confidential records of medical certificates, correspondence, telephone calls and meetings.

Conduct an investigation

- Investigate the nature, extent and likely duration of the illness. Ensure you have up-to-date medical evidence that gives a clear prognosis (obtained with your employee's written consent).
- If the absence is stress-related, refer your employee to your stress policy (if you have one) or any counselling services that are on offer. Consider whether dismissal could be avoided by changing the employee's role or duties.
- If the absences are short-term and intermittent, your business should investigate whether there is an underlying cause (medical or otherwise). If necessary you should follow a capability or disciplinary procedure, setting timescales for improvement and giving warnings where appropriate.
- Maintain contact with your employee throughout the procedure, especially when you:
 - receive medical evidence;
 - are considering what adjustments to make or whether an alternative position would be suitable;
 - are contemplating dismissing the employee.

Disability and reasonable adjustments

Consider whether:

- Your employee is disabled under the Equality Act 2010 (relying on medical evidence as required).
- Any adjustments to your employee's duties or workplace would assist their return to work (or their taking less time off work if their absences are intermittent) and, if so, whether making those adjustments would be reasonable in the circumstances.
- There is another job within your business that might be more suitable for your employee.

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Review the alternatives

Before taking the decision to dismiss, your business should consider:

- The importance of your employee and the position they occupy in your business.
- The impact their continuing absence is having on your business.
- The difficulty and cost of continuing to deal with their absence.
- Whether you can avoid dismissing the employee (for example, by offering them an alternative position).
- Their age, length of service and the circumstances surrounding your employee's absence.
- Any action that your business has taken in relation to other employees in similar circumstances in the past.
- Claiming under the terms of any permanent health insurance (PHI) policy or ill-health retirement if your employee has been absent long-term and is unlikely to return in the foreseeable future.
- If your employee currently receives PHI benefits, check whether dismissing them would have an adverse affect on their PHI entitlement.
- Reviewing the medical evidence to make sure it is up-to-date.

Make sure the correct procedure is followed

- Once you have decided to dismiss, write to your employee inviting them to a meeting, making it clear that you are contemplating dismissing them.
- Provide enough information about the circumstances you are taking into account and the possible outcomes to enable your employee to respond meaningfully.
- Hold a meeting with your employee and give them the opportunity to present their case against the dismissal.
- Confirm any subsequent decision to your employee in writing. The letter should:
 - give the reason for dismissal.
 - provide the effective date of dismissal.
 - offer your employee the right of appeal from the dismissal decision.
- Ensure your employee's contractual and statutory entitlements are met and that they receive the correct pay entitlement, including holiday pay.
- Hold an appeal meeting (if requested by your employee) and confirm the decision to your employee in writing.

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If you would like to know more about this topic or our other legal services, please contact Paul Maynard on 01323 435900 or by email pcm@gabyhardwicke.co.uk

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