

DESERTION

MEANING

Desertion implies that an employee has left the place of work and does not appear to have any intention of returning to the workplace.

HOW LONG?

Although the law does not state a specific period after which an employer can assume that the employee does not intend returning to work, in practice it is generally accepted that the period should not be less than five days.

The employee has an obligation to inform the employer of any reason why he/she is unable to be at work (for example being sick or having to attend to a family crisis), and when he/she intends returning to work. The employer would then have to agree with the employee about when he/she should return to work.

However, where the employee does not contact the employer, the employer has an obligation to try to contact the employee.

The purpose is to warn him/her of the possible consequences of staying away from work without permission, to determine whether there is a valid reason for the absence and why the employee could not contact the employer (for example unconscious in hospital) and to satisfy the employer that the employee has no intention of returning to work.

WHAT SHOULD YOU DO?

The appropriate thing to do would be for the employer to make contact with the employee using the employee's last known contact details informing him/her that he/she needs to explain his/her absence from work, and in the absence of

an acceptable reason, that unless he/she returns to work within a reasonable period (which must be specified), he/she will be regarded as having deserted and his/her services may be terminated. Forms of contact could include the following examples or a combination of the following:

- i. sending someone to the employee's place of residence;
- ii. sending the employee a registered letter;
- iii. sending the employee an e-mail;
- iv. sending the employee a telegram; or
- v. sending the employee a text message.

Whichever form of contact is used the employer should keep written proof that such communication has been delivered.

If the employer does not have an address for the employee, the employer should make a reasonable effort to get a message to the employee (*via* family, etc.) and keep a record of such attempts.

WHAT TO DO IF THE EMPLOYEE RETURNS?

If the employee returns to work by the specified date, the employer is entitled to enquire as to the reasons why the employee was absent from work and why he/she did not notify the employer earlier about the reasons and circumstances causing the absence.

The employer can then, based on the explanation given, decide on whether or not to take further action against the employee, for example disciplinary steps.

WHAT TO DO IF THE EMPLOYEE CONTACTS THE EMPLOYER?

If the employee makes contact with the employer within the period given, the employer can enquire as to the reasons why the employee was absent from work and why he/she

did not notify the employer earlier about the reasons and circumstances causing the absence. The employer can also agree with the employee when he/she will return to work.

THE EMPLOYEE RETURNS AFTER THE DATE GIVEN

If the employee returns to work after the date given, the employer would be obliged to give the employee an opportunity to explain him/herself. This would include giving reasons why he/she was absent from work, why he/she did not contact the employer and why he/she did not return to work within the period specified.

Where the reason is such that it was clearly not possible for the employee to make contact with the employer or to return earlier (for example been hospitalised), and particularly where there is some proof to support the employee's claim, or this claim can be verified in some way, the employee should be re-employed. Obviously, this will depend on the reasons given for the absence, and the proof that the employee can provide to support his/her claim.

OTHER

Even where the employee admits to desertion, he/she is still entitled to be paid for any period worked, and to be paid for any leave that has accumulated, together with their completed UI19 form, certificate of service and completed provident fund forms, if applicable.

RELEVANT LEGISLATION

- Labour Relations Act 66 of 1995 as amended Code of Good Practice: Dismissal