

ILL-HEALTH OR INJURY



SICK LEAVE – MINIMUM ENTITLEMENT

Sick leave works in a three-year cycle. An employee who works five days per week is entitled to 30 days paid sick leave and an employee who works six days per week to 36 days during a three-year cycle.

During every sick leave cycle an employee is entitled to an amount of paid sick leave equal to the number of days the employee would normally work during a period of six weeks. An employee may take one day's paid sick leave for every 26 days worked during the first six months of employment and thereafter an employee may take the number of days he/she normally works in six weeks during each three-year cycle.

An employee may be requested to produce a valid medical certificate if he/she has been absent from work for two days in a row or more than twice in eight weeks. If the employee does not have a valid medical certificate the employer does not have to pay the employee for the sick leave taken.

DISMISSAL FOR ILLNESS OR INJURY

Illness or injury (incapacity) of a serious nature may be a valid reason for dismissal. The specific circumstances of each case must be considered to determine the fairness of dismissal.

The first step is to determine whether the injury/illness is temporary or permanent. The opinion of an expert may be necessary to determine the seriousness of the incapacity, for example eyesight or hearing as well as the likely time that an employee may be absent, for example in the case of cancer or tuberculosis.

The absence does not have to be continuous and includes recurring periods of absenteeism.

The injury or illness can be physical or mental health issues.

PERMANENT INCAPACITY

Should the incapacity appear to be of a permanent nature, the employer should establish whether it is possible to -

- find alternative employment for the employee; and
- adapt the duties or work circumstances of the employee to accommodate the disability/illness.

If no such possibilities exist, then dismissal may be justified.

TEMPORARY INCAPACITY

The employer should —

- investigate the severity of the incapacity;
- the employee should be given an opportunity to state his/her case during the investigation and may be assisted by a trade union representative or a fellow employee.

If the employee is likely to be absent for an unreasonably long period of time, the employer must consider all the alternatives short of dismissal. When reviewing the alternatives and deciding what is a 'reasonable period', the employer must consider the following aspects —

- the nature of the job;
- the period of absence;
- the seriousness of the illness/injury; and
- the possibility of a temporary replacement.

An employee who contributes to the unemployment fund may, in certain circumstances, have the right to apply for illness benefits on account of his or her illness.

Employers should make a special effort to accommodate employees who have been injured at work or who contracted a work-related disease.

NOTE: In terms of case law, counselling is highly desirable when dealing with dismissal or instituting other measures relating to illness/injury in the workplace.

Rehabilitation and/or counselling may be considered, for example for alcohol or drug abuse.

Illness/injury and misconduct issues sometimes overlap, for example abuse of sick leave or where an employee reports for work in a drunken state — this may be regarded as misconduct or illness (alcoholism), depending on the specific case.

TEST TO DETERMINE THE FAIRNESS OF A DISMISSAL FOR ILL HEALTH AND INJURY

It must first be determined whether the employee is capable of performing the work.

If the employee is not capable, it must be determined to what extent the employee is able to perform the work, the extent to which the employee's work circumstances might be adapted to accommodate disability, or, where

this is not possible, the extent to which the employee's duties might be adapted; and the availability of any suitable alternative work.

The Employment Equity Act states that employers must take steps to reasonably accommodate persons with disabilities.

Reasonable accommodation means: Any modification or adjustment to a job or to the working environment that will enable a person from a designated group to have access to or participate or advance in employment.

COMPENSATION COMMISSIONER

With some exceptions, any employee who suffers a workplace-related injury or disease is entitled to compensation. To qualify for compensation, the employee must be able to show that the injury or disease is work-related.

JURISDICTION

Unfair dismissal disputes (ill-health or injury) must be referred to the CCMA. Claims for compensation for workplace-related injury or disease must be referred to the Compensation Commissioner on:

- The Compensation Commissioner Compensation House, cnr Hamilton and Soutpans Streets, Pretoria or
- PO Box 955, Pretoria, 0001
- CF-complaints@labour.gov.za, cfenquiries@labour.gov.za
- Fax: 012 326 1570/ 012 357 1772

RELEVANT LEGISLATION

- Labour Relations Act 66 of 1995, schedule 8, items 10-11
- Basic Conditions of Employment Act 75 of 1997 ss22-24
- Compensation for Occupational Injuries and Diseases Act 130 of 1993
- Compensation the Occupational Diseases in Mines and Works Act 78 of 1973
- Unemployment Insurance Act 63 of 2001.