Employers' Perspectives: Sickness Related Dismissals

This checklist sets out the steps your business should take if you are contemplating dismissing an employee for a sickness absence-related reason.

Although this can be a fair reason to dismiss an employee, it is important to follow the correct procedure.

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 medical condition causing the absence.

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:
  o receive medical evidence;
  o are considering what adjustments to make or whether an alternative position would be suitable;
  o 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.

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.
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- 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 has previously been taken in relation to other employees in similar circumstances.
- 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.
- Whether dismissal would have an adverse affect on any PHI entitlement your employee currently receives.
- 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 your decision in writing to your employee.

The letter should:
- provide the reason for dismissal.
- confirm their last day of employment.
- give the right to appeal the dismissal decision.
- Ensure your employee’s contractual and statutory entitlements are met and that they receive the correct pay entitlement, including notice and holiday pay.
- Hold an appeal meeting (if requested by your employee) and confirm the decision to your employee in writing.

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More information

If you have any questions, please visit our website at www.conybeare.com or feel free to contact Steven Conybeare via email steven@conybeare.com or call him on +44 (0) 870 753 0925.

About Conybeare Solicitors

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Our philosophy is simple: to work with our clients to help them realise their objectives.

We do this by fully understanding your requirements, taking into account business parameters, developing and executing a strategy to minimise regulatory and legal risk and drawing together the full extent of our legal expertise and business experience. Ultimately, we provide you with solutions to achieve your ambitions.

We are entrepreneurial in the way we work, the way we approach the challenges facing our clients and the way in which we ensure that we meet your expectations.