

Sickness related dismissals



Sickness issues can arise in many forms during employment and can lead to uncertainty as to how to deal with the employee in question. This fact sheet sets out the steps a business should take when it is considering 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.

If the business has a sickness or absence policy then this should also be complied with. It is advisable to have an effective policy in place in order to deal with absences consistently and effectively, as well as put employees on notice as to the expected standards of attendance and reporting notifications.

Conduct an investigation

- Investigate the nature, extent and likely duration of the medical condition causing the absence. Ensure the business has up-to-date medical evidence that gives a clear prognosis (obtained with the employee's written consent). Consider whether to obtain the report from employee's own GP or an independent health adviser;
- If the absence is stress-related, refer the employee to the business' stress policy (if one exists) or any counselling services that are provided or available. Consider whether dismissal could be avoided by changing the employee's role or duties;
- If the absences are short-term and intermittent, the business should investigate whether there is an underlying cause (medical or otherwise). If necessary, the business should follow a capability or disciplinary procedure, offering practical guidance, setting timescales for improvement and giving warnings where appropriate;
- Maintain contact with the employee throughout the investigation, especially when the business:
 - wishes to obtain medical evidence or a report;
 - receives medical evidence;
 - is considering what adjustments to make or whether an alternative position would be suitable;

- is contemplating dismissing the employee;
- Consultation with the employee is vital;
- Review the relevant provisions in the employee's contract;
- Keep confidential records of medical certificates, correspondence, telephone calls and meetings.

Disability and reasonable adjustments

Consider whether:

- the employee is disabled for the purposes of discrimination legislation under the Equality Act 2010 (relying on medical evidence as required but also any other relevant evidence);
- any adjustments to the employee's duties, workplace, or working conditions 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 the business that might be more suitable for the employee.

Review the alternatives to dismissal

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

- The importance of the employee and the position they occupy in the business;
- The impact their continuing absence is having on the business;
- The difficulty and cost of continuing to deal with their absence;
- Whether the business can avoid dismissing the employee (for example, by offering them an alternative position);
- The employee's age, length of service and the circumstances surrounding their absence;
- Any action that has previously been taken in relation to other employees in similar circumstances;

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- Claiming under the terms of any permanent health insurance (PHI) policy or ill-health retirement if the employee has been absent longterm and is unlikely to return in the foreseeable future;
- Whether dismissal would have an adverse affect on any PHI entitlement the employee currently receives;
- Reviewing the medical evidence to make sure it is up-to-date.

Make sure the correct procedure is followed

- Once the business has decided that dismissal may be necessary, write to the employee inviting them to a meeting, making it clear that the business is contemplating dismissing them;
- The employee should be given at least two days' notice of the meeting, and the opportunity to be accompanied by a trade union representative or fellow employee of their choice;
- Provide enough information about the circumstances the business is taking into account and the possible outcomes to enable the employee to respond meaningfully;
- Hold a meeting with the employee and give them the opportunity to present their case against the dismissal;
- Confirm the decision in writing to the employee. The letter should:
 - provide the reason for dismissal;
 - confirm their last day of employment;
 - give them the right to appeal the dismissal decision.
- Ensure the 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 the employee) and confirm the decision to the employee in writing.

Potential pitfalls

As with any dismissal, an employee may make a claim of unfair dismissal (if they have the requisite period of service) or discrimination. The best way to protect your business against a claim is to follow a fair procedure and keep records of all investigations and considerations, together with the reasons for your decision to dismiss.

Where the issue is short-term and intermittent absence then the procedure must usually include a series of warnings before the dismissal stage is reached. It may also be appropriate to obtain medical evidence to explore whether there is any underlying cause for the absences.

How can we assist you?

- Drafting sickness absence policies and procedures to assist you in effectively managing sickness absence in your workplace;
- In the event that a claim of discrimination or unfair dismissal is made against you, we can assist you in successfully defending this.

If you would like any further information about our specialist employment law and HR services, please contact a member of the team.

KEY CONTACT



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Kevin is experienced in all aspects of employment law, both claimant and respondent, from drafting contracts and procedures, through to providing representation before tribunals in cases involving multiple claimants, and advising on dismissal and re-engagement procedures in relation to contract variations for 500 plus employees. He has worked across the public and private sectors, for high street practices, local authorities and RSLs. This diverse range of experience has given him a very good understanding of the different pressures and considerations that apply when providing advice to individuals, businesses and public bodies. Kevin is admired for his pragmatic approach to most problems, and for finding solutions which minimise both cost and risk to clients.

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