

Personnel Today

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Long-term sickness absence: five tricky issues for employers

By Sarah Embleton and Laura Brown on 8 Sep 2014 in Disability discrimination, Sickness absence



Managing an employee on long-term sick leave has to be one of the most challenging areas in HR. Sarah Embleton and Laura Brown look at some of the many and varied issues that arise.

Q: Should I give pay rises to employees on long-term sick leave?

Ask any line manager and you will probably get: “Surely not, they’re not here so why would they get a pay rise?” (possibly not phrased quite so politely). However, it is not as simple as that. Failing to consider an employee on sick leave for a pay rise may lead to allegations of disability discrimination (depending on the nature of the illness), so employers cannot just adopt a blanket “no” answer to this question.

If you award a flat pay rise across the board, the situation is relatively straightforward as the sick employee's salary should be increased in line with this. Good practice would dictate this approach even if the employee is not disabled.

If, however, you award pay rises on an individual basis, the situation becomes more difficult. You will need to assess the employee's performance, which is difficult if they have not been around. Perhaps the easiest approach is to consider the employee's performance prior to their absence and base the review on that. If their performance would have justified a pay rise before they went off, it is therefore sensible to award the rise.

A word of caution, however, if their performance was not up to scratch before their absence. If the reason for their underperformance is related to a disability, the duty to make reasonable adjustments is likely to apply to the pay review process and you would need to ensure that the process is adjusted so they do not suffer a disadvantage.

Consistency of approach is also important – so you should bear in mind how have you treated absent employees in the past.

Q: Our policy is to refer employees on long-term sick leave to occupational health but I often find their responses vague and non-committal. What should I do?

A coherent medical report makes it immeasurably easier to deal with an employee on long-term sick leave. The "perfect" report would usually cover the diagnosis, likely prognosis, treatment and timescale for any return to work, as well as detailing the duties the employee may be able to perform. The report should also give guidance on any reasonable adjustments to working arrangements that could be made to assist the employee.

But the perfect report can be elusive. To ensure you get meaningful information, do not leave matters to chance. Make sure occupational health clearly understand what you want from them and give them as much information as you can about the nature of the employee's role, what they are required to do and how their role fits within the team.

Asking specific, tailored questions will also help you get clear answers. For example, is the employee fit to carry out the duties listed in the job description? What is the likely time frame for a return to work? Is the health problem likely to reoccur? The more specific and thorough your questions are at the outset, the better quality and value of the report.

Also, do not be afraid to push back on vague or unsubstantiated comments. Point out where your questions have not been addressed, ask further questions and seek clarity where necessary.

Q: We like to stay in regular contact with any employee on long-term sick leave but I have had situations where the employee says ongoing contact causes them more stress. How should we respond?

This reaction is not uncommon and the key is to find the right balance. While your inclination may be to leave well alone, it is important not to let long-term absence drift. The person is still your employee and you should not just abandon them (even if that's what they seem to want). Explain to the employee that, as a responsible employer, you do need to keep in contact with them but agree the form this contact should take.

For example, if an employee knows when you will contact them and how, they are likely to find this easier to deal with than sporadic phone calls out of the blue.

Also, check if there are any reporting obligations in the employment contract and absence policy and ensure these are complied with (although you may need to be flexible about these obligations – for example by allowing the employee to email in rather than telephone).

If you are still making no headway, you may need to seek a medical opinion to help identify how best to stay in touch with the employee in order to minimise any stress.

Q: Should employees on long-term sick leave be given holiday?

Another horribly thorny area which kept courts and tribunals across Europe occupied for years. However, it has now been established that sick employees do continue to accrue statutory holiday while absent from work. This holiday can be carried over to the next leave year where the employee is unable to take the holiday in the current leave year due to their condition, although there is some scope to prevent an employee carrying leave forward year on year. If an absent employee leaves employment, they should be paid in lieu of untaken holiday.

Q: We offer permanent health insurance (PHI) and our pension scheme includes ill-health retirement benefits. Does this affect what I can do in terms of dismissing an employee for long-term ill-health?

The short answer is yes. Unless, as an employer, you particularly enjoy expensive litigation, you will always want to assess whether an employee might be entitled to cover under any PHI or ill-health retirement scheme before taking any decision to dismiss.

This is because an employee deprived of the opportunity to benefit from cover may be in a position to make a claim for the financial loss they will incur through not having had the benefit (which could be very significant). It is also likely to render the dismissal unfair.

The existence of PHI or an ill-health retirement scheme may also impact on the timing of a dismissal. If you dismiss an employee before they become eligible for cover, this too could lead to a claim if the employee can show that they might have been entitled to cover had their employment not been terminated.

Remember that if an employee is eligible for cover then (depending on the particular scheme) you, as the employer, are likely to be obliged to support any application for cover or indeed to make an application for cover on the employee's behalf.

An employer who refuses unreasonably to assist an employee in making an application can find themselves on the wrong end of a claim.

About Sarah Embleton and Laura Brown

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