

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 AIDS.

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

PERMANENT

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;
- ◆ adapt the duties or work circumstances of the employee to accommodate the disability/illness.

If no such possibilities exist, then dismissal is justified.

TEMPORARY

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 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.

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.

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) — CCMA. Claims for compensation for workplace-related injury or disease — the Compensation Commissioner on: (012) 319-1111 or (012) 319-9269 or (012) 319-9319.

RELEVANT LEGISLATION

Labour Relations Act, schedule 8, items 10—11
 Basic Conditions of Employment Act, ss22— 24
 Compensation for Occupational Injuries and Diseases Act

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Compensation the Occupational Diseases in Mines and Works Act