Managing Absence

Recent surveys indicate that the adverse impact of absence on business profitability today is significant, with absence rates in 2021 at their highest levels since 2009.

. Recent statistics show that an average of 6.9 days are lost each year per employee with a median cost of £798 per employee.

We consider below the main principles of effective absence management.

Good absence management procedures

The majority of businesses surveyed (94%) confirm that tightening of policies to review attendance has a major influence on controlling levels of absence, particularly when three fifths of all absence is for minor illness of less than five days duration.

The difference between short and long-term absence

When managing sickness absence issues, employers need to distinguish between short-term and long-term absences. Where the absence consists of short but persistent and apparently unconnected absences then, after suitable investigation, disciplinary action may be appropriate. However, this is not a suitable course of action in relation to longer-term sickness absence management.

Short term absence procedures

There are a number of key steps in managing short-term absence.

- Establish a clear procedure that employees must follow, for example, the use of a return to work interview with line management and completion of self-certification forms even for one day of absence. This will ensure that everyone is aware that monitoring takes place and there is a complete record of absence.
- Establish a system of monitoring absence and regularly review this for emerging trends. Frequent absences could perhaps be evidence of malingering but on the other hand could be a symptom of a deeper problem. Tangible statistics can provide useful warning signals to prompt early action and avoid problems in the future.
- Return to work interviews should always be undertaken by the individual's immediate line manager, which will ensure that clear reasons for taking time off from work emerge. This will give managers the opportunity to get to the root cause of an absence which could be a symptom of a deeper problem.
- If the issues are personal and not work related, the employer should decide on the amount of flexibility he or she is prepared to give to enable the individual to address their issue.
- If there may be an underlying medical condition the employer should consider requesting a medical report to support the level of absence; there may be a hidden underlying condition and links to disability discrimination may not be immediately apparent.
- All employees should be made aware that any abuse of the sick pay provisions will result in disciplinary action.
- If there is no good medical reason for the absences the employee should be counselled and told what improvement is expected and warned of the consequences if no improvement is seen.
- If there are medical reasons for the absence, consider any links to the Equality Act 2010, for example, does the absence relate to hospital appointments or treatment required; if so, the employer is required to make reasonable adjustments which includes allowing time off for treatment.
- If the situation reaches a stage where the employee is to be dismissed and there is no defined medical condition, it may be on the grounds of misconduct. Here the employer must be able to show that a fair procedure has been followed taking into account the nature and length of the illness, past service record and any improvement in the attendance record.
- If the employee has a recognised medical condition that is not a disability but the absence rate is unacceptably high, it may be possible to dismiss fairly for some other substantial reason after following the due process. Again length of service and the availability of suitable alternative employment are relevant factors to consider before reaching a decision.

Long-term absence procedures

The key steps in managing long-term absence include:

- absence procedures, monitoring and return to work interviews are as important as in the case of short-term absence

- it is always prudent to gather medical advice to assess whether the employee's condition amounts to a disability and also the capability of the employee to undertake their role going forward
- it is important to be specific about the information required from the medical report for example the nature of the illness, the ability of the individual to undertake their role, having provided a detailed description of responsibilities, the length of time the illness is likely to last, and any reasonable adjustments that would ease the situation
- upon receipt of the medical evidence a process of consultation and discussion should take place with the individual (welfare visit) subject to any recommendation of the doctor
- it is important to listen to the employee's proposals for their return to work
- if the cause of the illness is work related, the root cause should be investigated. Employers should discuss ways to reduce the influencing factors, for example, increased support, training or reallocation of duties. Could the employee return to work on a staged basis or on a part time basis for a short period?
- ensure all steps are recorded in writing to confirm what is expected of the employee and also what steps the employer is going to take, so there is no confusion and all actions taken are seen to be reasonable
- if the employee is to be dismissed it is likely to be on the basis of capability, however care will be needed to ensure all the requirements of the Equality Act 2010 have been considered and to demonstrate that a fair procedure has taken place.

Definition of disability

The definition of what constitutes a disability can be split into three parts:

- the employee must be suffering from a physical or mental impairment
- the impairment must have a substantial effect on the ability to carry out normal day-to-day activities, which would include things like using a telephone, reading a book or using public transport. Substantial means more than minor or trivial
- the effect must be long-term, in other words have already lasted for at least 12 months or be likely to last that long.

The Equality Act 2010 includes new protection from discrimination arising from disability. This includes indirect discrimination, associative discrimination and discrimination by perception.

Discrimination arising from disability

A person discriminates against a disabled person if:

- a person treats a disabled person unfavourably because of something arising in consequence of the disabled person's disability, and
- a person cannot show that the treatment is a proportionate means of achieving a legitimate aim.

However, this does not apply if a person shows that they did not know, and could not reasonably have been expected to know, that a disabled person had the disability.

Reasonable adjustments

If a medical report identifies a disability, in accordance with the Equality Act, an employer has a duty to make reasonable adjustments. This is quite broad and may mean physical adjustments to premises or the provision of equipment to assist the employee in carrying out their duties. It can also mean adjustments to the role itself by removing certain duties and reallocating them, changes in hours or place of work, or the provision of further training and supervision. It may also include transferring to any other vacant post subject to suitability.

In other words quite a number of steps are required of an employer if they are to establish a fair dismissal for capability in relation to an employee who has been absent for a long term of sickness.

How we can help

Please contact us if we can provide any further assistance or additional information.

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