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Managing sickness absence of an employee

Dismissing an employee for ill health is a potentially fair reason for dismissal as it relates to the employee's capability for performing the work which they were employed to do.

The key to a fair dismissal for ill health is a fair procedure. The statutory disciplinary and dismissal procedures set out a minimum procedure that must be followed requiring the employer to give the employee a written statement containing the reasons for dismissal, to hold a meeting with the employee and provide a right of appeal. However, existing case law goes further than this for long-term ill-health and requires:

- Consultation with the employee
- Medical investigation, and
- Consideration, where appropriate, of alternative employment.

The obligation to remain in contact with an employee who is absent through ill health is that of the employer. The employer should consult fully with the employee so as to establish the reason for the absence(s) and the employee's view of when he or she is likely to return.

The employer will normally be expected to seek proper medical advice if this is appropriate. Once the employer has properly informed himself of the employee's state of health and the prognosis, the employer should consider the requirements of the business, the employee's past sickness record and whether the employee could be offered an alternative position more suitable to their state of health.

When dismissing for reasons relating to capability due to ill-health, the employer must also bear in mind the effect of the Disability Discrimination Act 1995. If the employee qualifies as disabled within the meaning of the Act, and it is possible for the employer to make reasonable adjustments to enable the employee to perform the job, then the employer will probably be in breach of the Act if the employer fails to make such adjustments.

Where the problem consists of persistent short-term absences caused by unconnected minor ailments, a formal medical investigation would rarely prove fruitful. In these circumstances there should be a fair review by the employer of the attendance record and the reasons for absence, an opportunity for the employee to make representations, appropriate warnings of the level of attendance the employee is expected to attain, the period within which this is to be achieved and that dismissal may follow if there is no sufficient improvement.

For all employers faced with an employee who is incapable of performing their job properly due to ill-health, it is important that an effective procedure is put in place to manage the employee's absence and that full investigation is undertaken before a decision to dismiss is made. The crucial point to bear in mind in ill-health dismissals is that tribunals will not only be concerned with what has happened in the past (and they will scrutinise the procedure followed carefully), they will also want to see that the employer has taken reasonable steps to investigate what is likely to happen in the future. If there is little prospect of a return to work, dismissal may then be justified.

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