



MANAGING LONG-TERM SICKNESS ABSENCE: PRACTICAL STEPS FOR EMPLOYERS

By Natasha Hall, Solicitor

Managing long-term sickness absence is a critical aspect of maintaining a productive and supportive workplace. Effective policies and procedures not only help in supporting employees but also reduce legal risks for employers and avoid disruptions to business. This article provides guidance for employers on managing long-term sickness absence, from holding initial meetings with a sick employee to potential dismissal.

First formal meeting

Where an employee is off sick long-term, it is important to hold an initial formal meeting with the employee to ascertain key information so that you can take positive steps to address the situation. In this meeting you should discuss:

- **The employee's likely date of return.** This will help you to plan future contact, medical reviews and meetings, and will help you to assess whether you can wait for the employee to return or whether somebody will need to cover their work in their absence.
- **Whether the employee has a disability.** This is crucial to ensuring that you are able to take appropriate steps to avoid discrimination.
- **Return to previous job.** Establish whether the employee thinks they may be able to return to their previous job without any adjustments.
- **Adjustments.** Establish whether the employee believes they may be able to return to their previous job provided that adjustments are put in place to facilitate this. If the employee is disabled, you have a positive duty to make reasonable adjustments. Failure to do so risks the employee bringing a successful disability discrimination claim.
- **Alternatives.** Consider whether there are any alternatives which may be of interest to the employee, such as whether there is another job in the business which may be suitable for the employee, or whether they might apply for employment benefits.
- **Plan for return to work.** Discuss how you would facilitate a return to work.

Where you are contemplating dismissal, we recommend that you take legal advice to avoid the risk of an unfair dismissal claim.

Investigate the cause and likely length of absence

You should ensure that you identify the reason for absence to ascertain whether there is anything work-related which has contributed to the absence, such as workplace stress.

If you determine that the employee is unable to work and unlikely to return in the foreseeable future, you should consider whether the employee qualifies under any permanent health insurance (PHI) or ill-health pension provisions (see 'Dismissal and alternatives' below).

Obtaining medical evidence

For absences of longer than seven calendar days, employees should provide a doctor's certificate, i.e. a "Statement of Fitness for Work" or "fit note".

For some illnesses, for example where someone may have a disability or their condition may impact their ability to carry out their normal role, it may be appropriate to ask the employee to undergo a medical examination with an independent specialist at the employer's expense, as this may be more reliable than information obtained from the employee's GP. You should check the employee's contract of employment to see if they are contractually obliged to agree to attend a medical examination. You should ensure you act in accordance with any recommendations in the medical report unless there is a good evidence-based reason not to.

Meeting and consulting with employee regarding medical evidence

Once you have received a medical report, you should meet with the employee to discuss the report and consult with them before acting on any of the report's recommendations. You should write to the employee in advance to explain the nature and purpose of the meeting. More than one meeting may be required as consultation should be a continuous exchange of information and views.

You should address the following issues in the meeting(s):

- Whether or not you will pay contractual sick pay or continue or discontinue it.
- Whether the employee is fit to return to work and how any phased return would work.
- Whether the employee requires any reasonable adjustments if they have a disability.
- If the employee is not fit to return to work, whether they are entitled to ill-health retirement or PHI.
- Whether dismissal is a possibility in the future.

Occupational health support

If available, you should provide occupational health (OH) support where needed. OH can assist and advise on the following:

- Workplace assessments and adjustments
- Rehabilitation and support services
- Returning to work

If OH is not available, you should encourage the employee to contact their GP or other healthcare provider for advice and support.

Keeping a paper trail

It is vital to maintain accurate written records of all meetings and correspondence with the employee. This includes attendance notes, records of telephone messages left and letters following up on telephone conversations and messages. These records will be crucial if you subsequently dismiss the employee for capability and they bring a claim for unfair dismissal.

Keeping in touch

You should check in with the absent employee at regular intervals to:

- Find out how they are.
- Keep them up to date with any changes at work so the transition back to work is made easier.
- Ask for any updates on their condition.

It is advisable to agree the frequency of contact with the employee, for example you could arrange to phone them once a fortnight. However, the amount of contact which is appropriate or necessary may vary according to the size of the business and the employee's role in it. It is important not to be too overbearing, particularly where the absence has a work-related cause. Equally, it is important to keep in regular contact.

It will normally be appropriate to continue to send the employee any newsletters and invitations to events such as Christmas parties, though this may depend on the nature of the employee's illness.

Return to work

Where an employee has had a long-term absence and is returning to work, you should conduct a return to work interview. Ideally, this should be before their proposed return date so that any adjustments can be made in advance, but if this is not possible then the interview should be conducted on their first day back. The interview is designed to confirm their fitness to return and to reintroduce them back into work. It is important that such interviews are carried out consistently across the workforce to avoid allegations of discrimination.

During the interview you should discuss any adjustments the employee requires and agree them in advance of their return to work; this will help to avoid any complaint from their employee that,

for instance, their duties have been changed unnecessarily. You should continue to meet with the employee on a regular basis following their return to monitor the situation and be alert to any further adjustments that are required.

Examples of adjustments include:

- Phased return (e.g., working part time to begin with)
- Varied start and finish times
- Changing or reallocating duties to other employees
- Purchasing equipment or software

In any of the above, you will need to consider whether the employee will receive full pay during the transition back to full time or whether they will be paid for their working hours only.

If an employee expresses that they would like to return to work before the expiry of their fit note, you may wish to seek medical advice and carry out a risk assessment prior to agreeing that the employee can come back to work. If the employee cannot or will not provide evidence that they are fit to work, you are not obliged to allow them to return to work.

Dismissal and alternatives

Where it looks like the employee may not be able to return to work at all, or there is no indication of when this might be, or it is likely to be a significant period of time before they are well enough to return, there are several options open to an employer to consider.

If you or the employee have a PHI policy, this may provide benefits to the employee while they are unable to work. However, such policies often have strict criteria and the steps to obtaining or maintaining cover are often onerous.

Alternatively, occupational pension schemes sometimes allow an employee to retire early due to ill health. You will need to check the scheme rules which will set out the circumstances in which an employee can be considered for early retirement.

Only if neither of the above options are open to you should you consider dismissing the employee on the grounds of capability. If you wish to pursue this option, you should usually have held at least two prior meetings with the employee. It is crucial that you are satisfied that the reason for dismissal is ill-health and that you have followed a fair procedure, or you risk the employee bringing an unfair dismissal claim (and possibly disability discrimination).

Problem areas: disability and pregnancy

Particular care should be taken when conducting a capability process or contemplating dismissal of pregnant or disabled employees to avoid claims for discrimination. It is unlawful to dismiss an employee or subject her to any detriment because of a pregnancy or maternity-related illness occurring during the protected period. The protected period now lasts 18 months from the birth of the child. It is also unlawful to dismiss an employee because of a disability.

Conclusion

It is vital that you have appropriate procedures in place for responding to and managing long-term sickness absence. By implementing the steps above, you can maintain a positive and productive workforce, mitigate any negative impacts on your business and avoid the risk of discrimination claims.

If you need any assistance with managing long-term sickness absence, conducting a capability process or understanding employee rights, please get in touch with a member of the team.



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