Management of absenteeism/presentism due to ill health/injury

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Absenteeism is, without a doubt, one of the most challenging employment management issues with which employers struggle on a continuous basis. According to EOH, one of Africa's largest technology service providers, the cost of sick absenteeism in South Africa is more than R19 billion per annum. This is money paid to employees who are absent due to ill health or injury. In most companies, this can be the determining factor that results in a company heading for bankruptcy or profitability.

The objective of this article is to help you gain a better understanding of the principles and techniques necessary for dealing with employee absenteeism/presentism due to ill health/injury, in the context of current South African legislation. This will allow you to manage the various departments within an organisation more effectively, and avoid unfair labour practices that may result in disciplinary actions being overturned by the relevant legislative bodies.

Absenteeism is seen as any failure to report for, or remain at, work as scheduled regardless of the reason or duration. Even though employees may be physically at work, they may not be able to fully perform their duties and may be more likely to make mistakes on the job. This is presentism, which refers to the loss of productivity as a result of employees that are not fully functioning in the workplace because of illness, injury or other conditions.

The Basic Conditions of Employment Act (BCEA), No. 75 of 1997, states that all employees are 'entitled' to a minimum of 30 days (for a five-day work week) and 36 days (for a six-day work week) paid sick leave. However, during the first six months of employment, the employee is only entitled to one day paid sick leave for every 26 days worked. Many employers believe that they should accept any medical certificate, but this is certainly not the case. Section 22 of the Act enables the employer to manage sick absenteeism in terms of the acceptability of the sick leave notes submitted.

A proactive method for a company to manage absenteeism due to ill health/injury is to implement polices regarding time-keeping arrangements and submission of medical certificates for absenteeism.

- Employees who abuse sick leave or who tender fraudulent medical certificates should be disciplined according to the company's disciplinary code. Usually, these offences are seen as serious enough to justify dismissal.
- Strict control of leave entitlement is a further method of securing regular attendance at work.
- It is a legal requirement that employers keep attendance registers or clock card systems that monitor employees' attendance and record time-keeping offences. An historic view of an employee's time keeping can be used to establish a pattern of abuse when the employee persists with time-related offences.
- The company should consider leave as unpaid if an employee is absent for more than two days, or for one day or more on more than two occasions during an eight-week period, unless the employee provides a sick note once back at work. This sick note must state that the employee was unable to work for the duration of the absence from work.
- Employees who are absent from work on a Monday, Friday or the day prior to/following a public holiday should be required, in terms of company policy, to submit a sick note.
- Employees who fail to submit an appropriate sick note can be charged with unauthorised absenteeism, as well as breach of company policy.
- A sick note must be issued and signed by a medical practitioner or any other person who is certified to diagnose and treat patients, and who is registered with a professional council established by an Act of Parliament.
- A sick note will not be valid if it was issued in retrospect (backdated) or if it does not state that the employee was unable to work on account of illness or injury.
- Legislation has made it possible for employees to seek medical attention from traditional healers and to provide the required proof of their reason for absence in the form of a sick note. Thus, employers are obligated to treat a sick note from a traditional healer in the same way as that from any other medical practitioner. Sick notes can, however, be issued only by those traditional healers who are registered with the Traditional Health Practitioners Council of South Africa.

Cases of absenteeism or presentism in the workplace must be dealt with in a manner that is compliant with statute and case law

Photograph: courtesy of SASOHN

- It is a requirement that the medical practitioner provide his or her telephone number on the medical certificate for confirmation of the reason for the absence.
- Time taken off for medical check-ups and routine medical visits is excluded from the number of allocated sick leave days in terms of the BCEA.

Another method of managing absenteeism is by the employee informing the company about the absence:

- The employee must inform the employer about the intended absence before the commencement of the work day.
- The employee must inform the direct supervisor or line manager in the event of absence due to illness or injury.
- It is a serious disciplinary offence if employees fail to inform the company of their absence on the first day of the absence period.
- Messages should not be left with subordinates or peers as this is not an acceptable communication of absenteeism.

Often, companies are required to take a more serious approach to absenteeism caused by ill health or injury, by means of an incapacity hearing. An employer intending to dismiss an employee due to incapacity must do so in accordance with items 10 and 11 of Schedule 8 of the Labour Relations Act (LRA), No. 66 of 1995, failing which, the fairness of such dismissal may be challenged.

Schedule 8 of the LRA embodies the Code of Good Practice in relation to dismissal. Item 10 of the schedule provides as follows:

10: Incapacity: ill-health or injury

1. *Incapacity on the grounds of ill health or injury may be temporary or permanent. If an employee is temporarily unable to work in these circumstances, the employer should investigate the extent of the incapacity or the injury. If the employee is likely to be absent for a time that is unreasonably long in the circumstances, the employer should investigate all the possible alternatives short of dismissal. When alternatives are considered, relevant factors might include the nature of the job, the period of absence, the seriousness of the illness or the injury and the possibility of securing a temporary replacement for the ill or injured employee. In cases of permanent incapacity, the employer should ascertain the possibility of securing alternative employment, or adapting the duties or work circumstances of the employee to accommodate the employee's disability.*
2. *In the process of the investigation referred to in subsection (1) the employee should be allowed the opportunity to state a case in response and to be assisted by a trade union representative or fellow employee.*
3. *The degree of incapacity is relevant to the fairness of any dismissal. The cause of the incapacity may also be relevant. In the case of certain kinds of incapacity, for example alcoholism or drug abuse, counselling and rehabilitation may be appropriate steps for an employer to consider.*
4. *Particular consideration should be given to employees who are injured at work or who are incapacitated by work-related illness. The courts have indicated that the duty on the employer to accommodate the incapacity of the employee is more onerous in these circumstances.*

When deciding on any steps to be taken after the incapacity hearing, the Code of Good Practice in the LRA requires that the actions are both procedurally and substantively fair.

Substantive fairness

As stated in items 10 and 11 of the Code of Good Practice, Schedule 8 of the LRA, the following must be taken into consideration when determining if a dismissal arising from ill health or disability is fair:

1. *Whether or not the employee is capable of performing the work; and*
2. *If the employee is not capable:*
   a) *The extent to which the employee is able to perform the work.*
   b) *The extent to which the employee's work circumstances might be adapted to accommodate disability, or, where is not possible, the extent to which the employee's duties might be adapted; and*
   c) *The availability of any suitable alternative work.*

Procedural fairness

Before dismissing an employee, an incapacity enquiry/hearing must be held.

- Normal rules apply as to the notice to attend.
- The employee must be granted the right to submit a statement/case.
- The employee has the right to be represented by a trade union representative or fellow employee.

An incapacity hearing is NOT a disciplinary hearing! Incapacity is a 'no fault' process.

In conclusion, understanding the principles and techniques with regard to dealing with employee absenteeism/presentism due to ill health/injury will enable employers to implement the correct procedures in order to address and decrease absenteeism/presentism and ensure a healthy productive working environment.

The staff at LabourGenix seek to assist employers in conducting ill-health incapacity enquiries in a manner that is compliant with statute and case law. We undertake to provide conclusive advice and assistance to employers with regard to ill health in the workplace.