



Do you employ staff?

Do you have difficulty understanding your legal and contractual responsibilities as an employer?

Do employment problems keep you awake at night?

Hassle Free HR - Taking the hassle out of your HR and H&S Management

■ [Visit our website](#)

HR Update April 2012

We frequently receive queries relating to employee absence and so this month's HR update provides you with a brief overview of the legally compliant approach to managing both short-term and long-term absence in the workplace. It is also important to note that when managing absence, the focus is not on the genuineness of the employee's sickness absence, but on the business impact of unsatisfactory attendance.

Absence Management Procedure

Although not a legal requirement, it is important to have a clear absence management/attendance procedure in place. This will help to communicate your expectations and standards in a clear, consistent, structured way. For example, how and when do you expect an employee to notify you of an absence, will you accept text messages as a means of communication etc? Don't assume that all your employees will 'know what is expected' – this is often a common mistake which can come back to haunt an employer when an absence problem then emerges. Communicate clearly from the start and you will be in a better, stronger position to manage any issues arising in the future.

Conduct or Capability?

With any unscheduled absence from work, it is important to understand whether you believe, based on the balance of probability (evidence you have gathered), the absence to be conduct (won't do) or capability (can't do) related. This is important because your

'reasonable belief' will then determine your approach to managing the issue.

Are you being fair and reasonable?

An important question to ask yourself is; are you being fair and reasonable? This is a simple question, but one which is often overlooked when situations become too emotional. In the case of absence related dismissals, an employment tribunal will also ask this question.

Burden of Proof

The responsibility or burden of proof lies with the employer to prove they managed the employee absence in a fair, reasonable and non-discriminatory way. You can do this by documenting each step that you take. Typical documentation (evidence) will include your absence management procedure, self-certification forms, GP certificates (Fit Notes), return to work notes, invite to disciplinary hearing letters, disciplinary notes, disciplinary outcome (warning) letters, an occupational health advisor's letters/reports etc.

Short-term versus Long-term Absence

We draw a distinction between short-term and long-term absence, because the management approach may often vary. Although not always the case, repeated short-term absence may be deemed to be 'conduct' related and is therefore managed in a more straightforward way via your disciplinary procedure. With long-term absence however there may be a link to an underlying continual long-term or repeated medical condition which may be termed as a 'disability' and therefore protected against disability discrimination by the Equality Act 2010. In this case you would need to ensure that you make 'reasonable adjustments' to the management of any associated absences.

Occupational Health Intervention

Absence management can become quite complex and it is therefore important to seek the intervention of medical experts in order to confirm and/or support any decisions you may wish to make which would impact upon an employee's future employment.

Further Advice

We hope you have found this brief overview of absence management useful. If you have an absence problem or any other employee related problem which you would like to discuss in confidence then please don't hesitate to contact us; ehedley@hasslefreehr.co.uk for further advice and information.

For clarification of any of the above updates or for advice and guidance on any HR and/or Health and Safety Concerns contact us by emailing ehedley@hasslefreehr.co.uk or by calling 02476 664092.

Hassle Free HR Limited Registration Number: 5844301