

Long term sickness – How to manage it.

One of the most difficult issues that employers face is how best to help an employee on long-term sickness absence or with a chronic health problem.

For all employers a balance has to be struck between being sensitive and supportive with business continuity and demands but it is becoming more commonplace for employers to be reluctant to contact a poorly employee who is absent due to ill-health, let alone consult with them about the issues.

We hope the following provides some useful advice on how to tackle long-term absence or complex health issues, and not shy away from them.

As with most problems in employment law, open and honest dialogue is key.

Employer – ‘know thy place’ – from the start!

As an employer, you are not required to diagnose or provide advice on an employee's health problem. However, you are also not expected to simply take at face value what an employee says.

So, the best starting point is usually – get advice – but from whom and when?

GP or Occupational Health

This really depends on the facts of each case. There are positives and negatives about each. However, in the case of long-term sickness absence and / or serious or chronic health problems, specialist occupational health advice is usually required.

The decision is best made with the help of a specialist employment law solicitor. They will be able to guide the employer after considering all of the issues, risks and taking into account the needs of the business.

Not only that, but in an increasing number of cases more than one report is required and sometimes, it may be necessary to obtain an expert opinion, from a surgeon, psychiatrist or industry expert for example.

One of the most important things to remember is to discuss the options and reasons for any decisions with the employee. Their input is vital.

Don't ‘rubber stamp’ advice

Employment Tribunal decisions are clear – the employer must not blithely rubber stamp what the occupational health advisor (or GP) says. This may appear contrary to employers, who are advised not to form medical opinions themselves, however the issue is more complex and at each stage, employment law advice from a specialist solicitor is needed. This is especially important when considering if an employee is disabled, as defined in accordance with the relevant legalisation.

This fact sheet provides information and comments on legal issues, however the contents of this fact sheet do not constitute legal advice, is not a comprehensive treatment of the subject matter covered, and should not be relied on as such. Legal advice should be sought about your specific circumstances before taking any action with respect to the matters discussed.

Long term sickness – How to manage it.

What are the risks?

Compensation aside, the management time spent in trying to rectify a capability issue with an employee who has been absent for a long time or who has a complex medical problem is potentially vast.

Claims can be made during employment (many employers do not realise this) or after it has ended. Those claims, as well as being hugely distracting for the employer, can result in substantial compensation too.

Laceys top 5 tips on how to manage long term sickness.

1. Have procedures in place for dealing with long-term or frequent absences. This can be as simple as talking to the employee about their health, but with care and sensitivity (and avoiding discrimination).
2. Dialogue is essential. The employer should take the lead in establishing contact and keeping in touch with an absent employee. They may feel ostracised or unable to express their views otherwise. Keep accurate notes.
3. Think about disability early. This is because reasonable adjustments will have to be made if the employee is disabled (as defined). Getting specialist medical and legal advice is vital at the key stages.
4. Be prepared. Train managers to empower them to have difficult conversations and how to spot discrete issues that often arise from mental health problems.
5. Get specialist legal advice as early as you can, even if there is no problem yet. It will really help in the long-run and should reduce the likelihood of a successful claim.

Laceys Employment specialists are here if you need us. If you would like any further information please contact Geraldine White in confidence on 01202 377910 or email g.white@laceysolicitors.co.uk