



A-Z OF EMPLOYING

Absenteeism

Our guide for Employers and Managers

**SUPPORTING,
FACILITATING &
REPRESENTING
BUSINESS**

Business**Central** 

Absenteeism

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This is only a guide. It should not be a substitute for professional advice.

Please seek advice from our AdviceLine Team if you require specific assistance.

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Overview

Absenteeism describes a number of situations where an employee either fails to report their absence from work, is absent without authorisation from work, or is absent with authorisation from work on a repeated or prolonged basis.

If left unmanaged, absenteeism may cause other staff to experience unbalanced workloads and/or resentment towards the employer.

How absenteeism is managed will depend on the reason(s) for its occurrence. Correctly identifying the problem(s) is an important step towards managing absenteeism.

Where the underlying cause of absenteeism is illness, injury or incapacity, employers should seek professional and expert advice; the failure to consider all aspects of an employee's individual circumstances could render a termination on these grounds an unjustified dismissal. For more information see the A-Z chapter on Incapacity.

Introduction

Absenteeism may be used to describe:

- ▶ The employee's failure to present themselves for work;
- ▶ An employee's unexplained absences from the workplace;
- ▶ Repeated or prolonged absence from work, which is in excess of the leave and holidays provided for in the employment agreement.

Employers often face situations, when for one reason or another, an employee's non-attendance in the workplace becomes an issue requiring management.

Absenteeism not only impacts on production levels; it impacts on other staff. When an employee absents themselves from the workplace someone else invariably has to take up the slack; sometimes things don't get done or completed and someone else becomes accountable. Colleagues can have legitimate feelings of resentment and if the absenteeism is ongoing, sustained resentment towards the employer. Employers have an obligation to all their employees to manage the workplace in a fair and reasonable manner.

Absenteeism has financial implications beyond production levels and staff morale. While an employee is not at work, the benefits of their employment continue. This means that if during the period of employment an employee is unable to work for complete weeks, because of sickness or injury, the employee continues to accrue annual holidays.

Absenteeism is not the abandonment of employment by an employee.

Refer to the **A-Z Guide on Abandonment of Employment** for information on that topic.

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Identifying the Problem

Identifying the extent of the problem is the recommended first step. Important information to analyse the extent of the problem may be found by:

- ▶ Assessing the employee's attendance record for patterns
- ▶ Reviewing the employee's personnel file for indications of matters raised during the recruitment and selection processes highlighting personal issues
- ▶ Revisiting documents kept from the employee's performance appraisals
- ▶ Talking with the employee

Once all the information about an employee's attendance has been obtained and reviewed, a clearer picture of the extent of their absenteeism should be obtained.

There are three aspects to identifying the problem of absenteeism. First is the *employee's failure to be at work* to the extent provided for in their employment agreement. Second is the *problem underlying* that employee's absence. Last is the *detriment suffered by the workplace* because of the employee's absenteeism.

Absenteeism can occur because of reasons both in and out of the employer's control. Obviously, most health issues and personal problems are largely the employee's to deal with privately, and while an employer can be supportive it cannot intervene unreasonably.

Sometimes when the absenteeism of one or more employees becomes apparent, investigation by the employer reveals that the problem is work-related. Absenteeism can develop as an (inappropriate) way of dealing with:

- ▶ Bullying and/or harassment;
- ▶ Uncertainty and lack of knowledge about the job;
- ▶ Personal conflicts;
- ▶ Unresponsive management processes;
- ▶ Boredom;
- ▶ Heavy and/or unrelenting workloads.

Managing the Problem

Managing the problem will depend on what the problem is. If the problem is illness or incapacity then it will require management in a very different way than if the problem is disobedience and disregard for the employer's policies and procedures.

Illness, Injury and Incapacity

Absenteeism under this heading may either be due to an ongoing problem the employee is suffering, or to a number of illnesses that are largely unrelated (such as headaches, 24-hour viruses, flu), which often causes the employer to doubt the genuineness of these illnesses.

Ongoing Medical Issue

Problems that are ongoing may include:

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- ▶ An accident for which the employee is receipt of earnings related compensation (ACC) for either a work related or non-work related injury because they are incapacitated for a period of time;
- ▶ Ongoing problems arising out of a prior injury;
- ▶ Either undiagnosed or diagnosed chronic (ongoing) medical problems;
- ▶ Complications after elective surgical procedures;
- ▶ Illness because of an infection or disease process.

How absenteeism should be managed in this situation may depend on:

- ▶ Whether the problem was known to the employer and/or employee before the employment relationship began;
- ▶ Whether the problem has been caused by a work related injury, or a non-work related injury;
- ▶ The length and quality of the employee's service;
- ▶ Whether the employee's position is readily filled on a temporary basis;
- ▶ The importance of the employee's position to the workplace;
- ▶ The length of the employee's absences;
- ▶ Whether the employee's absences or health issues can be reasonably accommodated;
- ▶ Whether the employee is capable of alternative duties or light duties;
- ▶ Whether the employee can be redeployed or relocated.

When an employee is unable to be at work or fulfil their normal duties for a prolonged period of time, you may find that at some stage the absence can no longer be accommodated.

The first step in dealing with absenteeism under this heading must be to begin (if it hasn't already begun) a dialogue with your employee about the reason for their absence and the prognosis. You will want the employee to provide you with some of the information they have received from the medical specialists involved in their care to assist your decision making. You will want to ensure that your employee understands that while you may be sympathetic to their situation, you are not obliged to keep their position open indefinitely and will want to involve them in any decisions that may be made affecting their employment.

Once all the information that can be obtained is on hand, you will need to assess the information and your employment situation to decide how to proceed. Professional expert advice is strongly recommended if you are considering terminating the employee's employment on the grounds of medical incapacity.

More information about incapacity can be found in the **A-Z Guide on Incapacity**.

Some important factors that will require consideration are:

- ▶ Termination for illness or incapacity is due to no fault of the employee;
- ▶ Section 21(1)(h) of the Human Rights Act 1993 prohibits an employer, where an employee is qualified for work of any description, from terminating the employment of the employee, or subjecting the employee to any detriment, in circumstances in which the employment of other employees employed on work of that description would not be terminated, or in

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which other employees employed on work of that description would not be subjected to such detriment, by reason of that employee's disability, which includes physical disability or impairment, physical illness and psychiatric illness.

- ▶ Factors beyond the effective control of the parties appear to bring about a situation in which the employer may be entitled to protect and enhance its legitimate interests, to end the employment relationship: *Paykel v Morton* [1994] 1 ERNZ 875.
- ▶ The terms of the contract, including the provisions as to sickness pay - The basis of weekly employment may be destroyed more quickly than that of monthly employment and that in turn more quickly than annual employment. When the contract provides for sick pay, it is plain that the contract cannot be frustrated so long as the employee returns to work, or appears likely to return to work, within the period during which such sick pay is payable.
- ▶ How long the employment was likely to last in the absence of illness - The relationship is less likely to survive if the employment was inherently temporary in its nature or for the duration of a particular job, than if it was expected to be long term or even lifelong.
- ▶ The nature of the employment - Where the employee is one of many in the same category, the relationship is more likely to survive the period of incapacity than if he occupies a key post which must be filled and filled on a permanent basis if his absence is prolonged.
- ▶ The nature of the illness or injury and how long it has already continued and the prospects of recovery - The greater the degree of incapacity and the longer the period over which it has persisted and is likely to persist, the more likely it is that the relationship has been destroyed.
- ▶ The period of past employment - A relationship which is of long standing is not so easily destroyed as one which has but a short history: *Marshall v Harland & Wolff Ltd* [1972] ICR 101.
- ▶ Proper notice: the employer has a duty to disclose to an affected employee its views and intentions and to afford to that employee an opportunity to make a response, whether by disabusing the employer as to the ability to resume work or resuming work as required by the employer: *Northern Hotel etc IUOW v Southern Pacific Hotel Corporation* [1990] 2 NZILR 918.
- ▶ Where there is doubt as to the medical position, the employer is obliged to ascertain the facts before dismissing the employee.
- ▶ Where an adverse medical report is obtained the employee should be given the report for their perusal and considered reply, particularly where an employee disputes the soundness of the medical opinion or where there are matters which make it clear that other medical opinions could possibly differ.
- ▶ The employer need not be generous in the time it allows an employee to recover, but it must not be unfair: What this amounts to, speaking generally, is that the employer has to wait a reasonable time to give the injured employee an opportunity to recover (what is reasonable being a question of fact in each case) and after that it has to inquire in a fair

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and open-minded way whether the employee has any realistic prospects of returning to work within a further reasonable time: *Barry v Wilson Parking NZ (1992) Ltd* [1998] 1 ERNZ 545.

This list of factors is not exhaustive. Refer to the **A-Z Guide on Incapacity** for more information.

Intermittent absenteeism

Commonly an employee's absences are not due to a singular, ongoing medical problem. Instead the absences may be due to a series of unrelated minor illnesses or for non-medical reasons. Sometimes such absences form a suspicious pattern (e.g. employee only falls sick on Fridays).

Intermittent absenteeism that is rare or sporadic is usually accommodated by an employer and is seen as quite normal. However there are instances when intermittent absenteeism becomes more regular, less sporadic and harder for the company to accommodate.

Whether the employee has a valid and reasonable explanation for their absence, or not, will become clear at the first questioning of that employee. Where the employee offers a genuine and reasonable explanation, the matter will usually end there. However, in some circumstances you will question the employee's integrity because a similar incident has occurred before or there is another unavoidable inference that can be drawn in the circumstances. Whatever the case may be intermittent absenteeism that is becoming an identifiable problem for the company needs to be addressed.

Even if the employee appears to have a genuine reason on each occasion, perhaps even a medical certificate, absenteeism of this kind may still require management. On-going absenteeism may compromise the performance of business units, and generate dissatisfaction amongst other staff required to fill the gap to absence has made.

The first and most important step is establishing the reason behind the employee's absence. This relates to not only the most recent occurrence of absenteeism but also the pattern of absenteeism that has become apparent. The employee should be shown evidence to outline the number of days that they have been absent and they should be asked if there is any underlying cause.

It is important that employers are careful initiating any processes. Caution is strongly advised because employees should not be punished for being sick. The employer should carefully consider the individual circumstances before beginning such a process, taking into account the employee past behaviours, work record, length of service, and the organisational culture.

The reasons provided, if any, will determine the process to follow going forward. These processes are outlined below however the information provided is intended to serve as a guide and the process may vary depending on the individual circumstances.

Medical Intermittent Absenteeism:

An employee's absenteeism due to intermittent medical problems, whether the medical issues are related or not, should be approached from an incapacity perspective.

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The main inquiry should be based on what is the present prognosis and what is the future prognosis. Employers should ask for evidence from the medical professional that the employee has been seeing, as to how the medical issue will impact on the employee's employment going forward.

Once evidence has been obtained, it will become apparent whether the level of absenteeism will continue, reduce, or stop. If the evidence received indicates that the medical issue is likely to cause on-going, if not indefinite, intermittent absenteeism, the ultimate question for the employer to consider is whether the absenteeism can be accommodated.

More information about incapacity can be found in the **A-Z Guide on Incapacity**.

Non-medical Intermittent Absenteeism

Where there is no medical reason to explain an employee's intermittent absenteeism the initial aim of communications to the employee should be to highlight the level of absenteeism, the resulting issues for the company, and what the company can do to assist the employee into reaching acceptable levels of attendance.

Where the underlying reason for the absenteeism is personal in nature, for example the employee is experiencing family issues, the employer may wish to offer support through workplace counselling or an Employee Assistance Programme.

The employee can be expected to have acceptable attendance levels. The employee should be advised that should similar patterns or levels of absenteeism continue, the company will initiate an absenteeism management programme. It should be outlined that the absenteeism management programme includes a progressive warning system with a potential of a final outcome of termination if there is little or no improvement to the employee's attendance record.

However, this does not mean that the employee should be issued with a warning the next time they are absent from work. Each incidence of absenteeism should be discussed with the employee and recorded as should the reason the employee gave for the absence. It is upon review after a reasonable period whether there has been any improvement or whether a warning is appropriate.

A formal process should take place before a warning is issued. The purpose behind the warning should be to highlight the failure to meet contractual attendance obligations or failing to maintain an acceptable attendance record.

Unauthorised absence

Absenteeism under this heading may be attributable to:

- ▶ Emergencies;
- ▶ Genuine mistakes about rosters / shifts;
- ▶ Deliberate disobedience in face of an employer's refusal to grant leave;
- ▶ Deliberate disobedience without reason.

Leniency should be considered where the employee is absent due to an emergency or a genuine mistake about rosters or shifts. Employer's may wish to offer guidance or counselling however it would be reasonable to expect that this type of absenteeism is rare.

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Deliberate disobedience is a form of misconduct, possibly serious misconduct, and should be addressed from a disciplinary perspective.

More information on the process to follow can be found in the **A-Z Guide on Discipline**

Failure to report

Another form of misconduct often linked with unauthorised absence is the failure to follow the company's policy regarding calling in sick. If an employee fails to call in sick at all or fails to use the correct method of communication to notify you of their absence, you should address this with the employee upon their return to work.

Refer to the **A-Z Guide on Discipline** for a guide on how to manage unauthorised absences and the failure to notify.

Conclusion

When there is an issue of absenteeism with one of your employees, it is recommended that you begin gathering information that will assist you to identify what the problem is and how best to manage it.

Where the information reveals a complex situation that will require ongoing input, keeping notes of each stage of that process is important; notes kept on the employee's personnel file can be helpful if a dispute ever arises.

Never be reluctant to seek professional expert advice; no matter how straightforward some employment situations appear to be it is often extremely valuable to have the benefit of an objective point of view and professional assistance may prevent potentially expensive and distressing disputes arising.

You can contact one of our employer advisors for telephone advice and assistance: **0800 800 362**; or email the Business Central AdviceLine at advice@businesscentral.org.nz.

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Remember:

- ▶ Always call AdviceLine to check you have the latest guide (refer to the publication date below).
- ▶ Never hesitate to ask AdviceLine for help in interpreting and applying this guide to your fact situation.
- ▶ Use our AdviceLine employment advisors as a sounding board to test your views.
- ▶ Get one of our consultants to draft an agreement template that's tailor-made for your business.
- ▶ Visit our website www.businesscentral.org.nz regularly.
- ▶ Attend our member briefings to keep up to date with all changes.
- ▶ Send your staff to Business Central Learning courses and conferences designed for those who manage employees.

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