

## EMPLOYMENT LAW FOCUS

### Dealing with Employee Absenteeism

Employers often struggle with employees taking excessive sick leave and at times, an employer may suspect that the sick leave is not genuine. But what can employers do about it?

The minimum entitlement to paid sick leave is five days and many companies offer more. However, sometimes employees abuse that entitlement by taking more days than they are owed, or they might take sick days when they are not genuinely unwell.

For many employers managing employees' absenteeism can be a real headache, but it doesn't have to be. Often managers feel uncomfortable asking employees about why they

are away from work, and they can feel at a loss as to what to do when they know something isn't right. However, there are steps that can be taken to address these problem employees, who take more than their fair share of leave.

Since 1 April 2011, section 68 of the Holidays Act 2003 has permitted an employer to require proof of sickness or injury even for a one-day absence, provided the employer notifies the employee of the requirement as soon as possible and agrees

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to meet the reasonable expenses of the employee in obtaining such proof – for example, a visit to a doctor. This can make ‘pulling a sickie’ a little less attractive when the case is not genuine.

### **When ‘pulling a sickie’ backfires**

In the case of Griffith v Sunbeam Corporation Limited the Employment Court held that abuse of sick leave can be treated as serious misconduct given that the use of sick leave is, by its nature, a matter requiring a significant degree of trust of the employee by the employer. In that case an employee who called in sick saying he would not be of use to anyone was seen later in the day being very useful, albeit working on the construction of his house. His subsequent dismissal following an investigation was held to be justified.

In the case of Southcombe v Freedom Air Limited a flight attendant who booked a four-week overseas trip was only granted three weeks’ annual leave. He obtained a medical certificate for one week off work prior to commencing his

leave, extending his leave to four weeks. He argued that his doctor had approved his travel to a warmer climate during his period of recuperation provided that he took things easy.

The Employment Relations Authority held that sick leave was for the purpose of rest and recovery in order to return to work; employees do not have carte blanche to do whatever they want, including overseas trips, and held that his dismissal was therefore justified.

### **Red Facebook**

A recent case highlights how social media is starting to catch out some employees. In Bruce Tiapa v TeRunanga o Turanganui A Kiwa, an employee whose last-minute request for leave was declined left town anyway. Whilst leave for half the time could be accommodated and had been granted, his work could not be covered for the latter half and leave had been declined.

Mr Tiapa called in sick for the non-approved leave days and obtained a retrospective medical certificate to support his claim. Unfortunately, a Facebook photo of him sitting in a grandstand

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with a woman sitting on his knee, smiling and giving the thumbs up, belied his claims of poor health. He had first attended an event in Rotorua followed by going to his grandson's squash tournament in Tauranga.

The employee was dismissed for serious misconduct based on misuse of sick leave. The dismissal was upheld as justified by the Employment Relations Authority, although at the time of writing, the appeal period for this case was yet to expire so it may not be the end of the matter.

### **Right to take action**

In summary, employers do have a right to take disciplinary action against employees who misuse sick leave, however, it must be preceded by a full and fair investigation into the matter.

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