

## **MEDICAL CERTIFICATE FOR BRIEF ABSENCE**

**Question:** If an employee is absent for a brief period (no more than 2 days) allegedly due to illness, may the employer insist on a medical certificate?

**Answer:** Yes, the employer may do so in the following circumstances:

- (a) where circumstances are such that it is reasonably necessary to prevent abuse of sick leave; and
- (b) where such a rule or policy has been implemented and clearly communicated.

**Brief explanation:** In common law an employee who is unable to work due to illness or injury would not be entitled to paid sick leave (because the employee is not tendering his/her services). The Basic Conditions of Employment Act (BCEA) overrides the common law by affording employees the right to paid sick leave. However, the BCEA provides (section 23) that an employer is not required to pay an employee if the employee has been absent due to illness or injury for more than 2 consecutive days, or on more than two occasions during an eight-week period, without the employee producing a medical certificate. This provision is of some benefit to both the employee and the employer: It benefits the employee in that he/she has to submit no more than a valid medical certificate as proof of incapacity; it assists the employer in preventing sick leave abuse. The employer may insist on no less than a medical certificate before the obligation to pay arises; i.e. the employer does not have to accept any other form of proof.

The BCEA is silent about the proof that is required for illness where the duration of illness is 2 days or less. The onus is therefore on the employee to provide reasonable proof to the employer that he/she was too ill to work. There could be several ways in which the employee could prove that he/she is too ill to work, but a valid medical certificate is probably one of the best forms of proof (and sometimes the only form of proof). In our view an employer should, at least in some instances, be entitled to insist on a medical certificate as proof of illness, even where the employee has been absent due to alleged illness for 2 days or less. For this to be reasonable, though, it must be made clear to employees (or a particular employee) in some rule or policy.

**Example:** Where there is a demonstrable tendency for employees to be absent due to alleged illness on certain days (e.g. before or after a public holiday, or on a Friday or Monday), it would be reasonable for the employer to introduce a rule or policy that the employer may insist that employees provide the employer with proof of absence due to illness (including in the form of a medical certificate) whenever employees are absent on those days. If an employee cannot produce reasonable proof of illness, then the employee has not demonstrated that he/she was sick and is thus not entitled to be paid for 'sick' leave.

The BCEA does not deprive an employer of the right to take reasonable measures to prevent and manage the abuse of sick leave.

*Article written by Jan Truter of Labourwise*

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