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**First Line Response**

# Absent and Out?

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## Introduction

Dealing with the health and wellbeing of a workforce is an obligation for employers under The Health and Safety at Work Act 1974. Employment legislation also provides protection for employees who are sick or disabled under the Equality Act 2010, the Medical Reports Act 1988 and the Employment Rights Act 2010 to name but just a few.

## Long term absences

Long term absences related to sickness or injury are complex to manage, especially if combined with performance, conduct or work-related stress issues.

Some businesses, concerned about the processes they need to follow, delay taking action making the situation more difficult the longer it goes on. And the pressure on business continues to mount.

Businesses have to consider how they can manage the absence. Can they hope without hiring a replacement? How long should they hire a replacement for? If the duration is uncertain, can they dismiss the employee? There's a generic process but no generic solution.

Every situation is unique. Be clear however that, subject to the right action being taken at the right time, an employer may be able to fairly dismiss an employee if a key role needs to be performed and the prognosis for recovery makes it unreasonable for the employer to hold the position open for the incumbent's return.

Employers are increasingly finding however that they have to satisfy an employment tribunal of the reasonableness of their decision, demonstrating that the decision to dismiss was taken only as a last resort. And after other options had been fully considered and exhausted

## Contact us

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Offices in Romford, London (City & West End), St Albans, Hayes and Redhill.

## A focus on process

Key rules to follow before dismissal are:

- ✓ Consult the employee and their doctor and consider taking the advice of an occupational health specialist
- ✓ Keep in touch and have regular meetings with the employee
- ✓ Comply with the Medical Reports Act when asking for consent to gain up to date medical reports
- ✓ Consider and record all options to help the employee back to work and ways of covering the absence
- ✓ Consider how long the business can wait before having to make decisions about future employment
- ✓ Warn the employee of the options that are having to be considered
- ✓ Observe the rights of the employee (including the right to be accompanied) at formal meetings
- ✓ Inform your insurers of your plans for dismissal, especially when related to an injury at work.

## Confusion of the fit note

The new Fit Note, which replaced the Sick Note in April 2010, has yet to have a positive impact on sickness absence. Fit notes have however introduced confusion into the system with many employers believing they have to comply with the recommendations made by the employee's Doctor and paying full pay to the employee when a phased return or shorter working hours are agreed. **This is not necessarily the case.**

Employers are obliged to meet the employee, to discuss and consider the recommendations that have been made, and to advise the employee of the decision, including the impact that this may have on their remuneration.

**General Enquiries**  
[enquiries@hrinsight.co.uk](mailto:enquiries@hrinsight.co.uk)

**Legal Support with HRi Legal**  
[legal@hrinsight.co.uk](mailto:legal@hrinsight.co.uk)

## Beware discrimination

It is essential to understand whether a condition being suffered by an employee is covered by the disability discrimination legislation. If so, and the employee can demonstrate they have suffered a detriment (including dismissal) because of their disability, they will be able to make a claim of discrimination. Discrimination claims continue to have unlimited liability for employers – beware!

## STOP PRESS. ANNOUNCEMENTS.

## 2012 public holiday date

Tuesday 5 June 2012 has been announced as a public holiday to commemorate the Queen's Diamond Jubilee. The late May bank holiday will be moved to Monday 4 June, to allow for a four-day weekend of celebrations.

## Change in reporting

From September 2011, only fatal and major accidents will be able to be reported by telephone. Other reportable accidents will be reported online with the HSE at [www.hse.gov.uk/contact/index.htm](http://www.hse.gov.uk/contact/index.htm).

## Bribery policy in place?

The Bribery Act came into force last week, on 1 July 2011. If you have yet to introduce your policy on Business Ethics and Anti-Bribery, do call us for a template.

## Can We Help?

If you have any questions about the content of this Factsheet or any specific concerns about any individual employee or processes to follow in dealing with a specific situation, please do contact us on **01708 758958** or visit us at [www.hrinsight.co.uk](http://www.hrinsight.co.uk).

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