

Personal/Carer's and Compassionate Leave Webinar Supplementary Notes and Resource Information

Personal and Carers Leave

- Personal/Carers and Compassionate leave form part of the Fair Work National Employment Standards, (NES)
- The NES provide the minimum conditions of employment which an employer cannot undercut.

Personal and Carers Leave – Evidence requirements

- An employer is entitled to request evidence of illness, particularly if an employee is approaching their 10-day accrual, a habitual leave taker or on a sick leave plan.
- An employee cannot return to work sooner than the date on the medical certificate as the date signifies fitness for work. So always check the date.

Managing Excessive Leave – Case Example

- Recent behaviour,
- No action has been taken by the business in the 8 months it has been occurring – gives the impression to other staff that the business is OK with it,
- Dave lives on his own,
- It does not appear that Dave has been asked to provide any evidence of illness,
- A sick leave plan to resolve this issue under
- Consider reviewing business policies

Managing Excessive Leave – Identifying Excessive Leave

As you start to dig into Dave's excessive leave you begin to understand the implication to the business

- Staff are cranky with Dave
- Lost productivity
- Morale is low - increased WHS risk
- There is a general feeling that Dave cannot be relied on to show up
- Dave is a good bloke, but it is wearing thin on his colleagues – future conflict

Managing Excessive Leave – Toward a Resolution

A meeting

The goal of the meeting is to work out the issues around the excessive sick leave and develop an agreed way forward

For Example

- Dave may have dinner with his brother on the second Thursday of every month, have a few too many and need to sleep it off at his brother place.
- Or he may be paired up with another employee on the second Friday of the month who bullies him or has unsafe work practices which make Dave feel very unsafe but he does not want to cause any trouble so he "gets sick" on that day.
- Or maybe Dave has cancer and is receiving treatment on that day which makes him sick. But he is a private person and does not anyone at work to know.

Listen and let Dave tell you his side of the story
Assure Dave the issue is confidential and only those who need to know will be informed.

Managing Excessive Leave – Sick Leave Plan

Best practice is to manage the leave through a Sick Leave Review and Plan.

The plan will involve:

- Who the employee will need to contact in the business when they know they will be off work,
- When the employee will need to contact the business
- Evidence that the leave is genuine,
- Acceptable proof of illness or injury
- How many days leave is acceptable for the employee during the plan, the time of the plan?
- What the next step will be if the outcome is unsuccessful- disciplinary action up to and including termination

Managing Excess Leave - Managing an Existing Illness

Long term illness – May also require a sick leave plan BUT of a different type. It will be to manage the illness.

Information gathering

- Is the illness degenerative?
- Risk assessment
- Do the employee's current duties contribute to or accelerate the illness,
- Do duties need to be modified to accommodate the employee whilst they are ill, or
- Can duties be continually modified as the illness progresses?
- Are there any suitable duties if their current duties are excluded by the specialists?
- Specialist updates,
- Regular Fitness for Duties examinations,
- Possible medical retirement.

Managing Excess Leave – Resources and Training

It is a business responsibility to have policies in place which act as guidelines to manage each case of excessive leave the same way.

- Reduces the possibility of an adverse action, discrimination, or unfair dismissal claim,
- Helps build employee trust,
- Provides staff with a clear cause and effect outcome - If I do this, then that may happen,
- Duty of Care.

Fair Work Act 2009 Clauses

- Personal and Carers Leave s97-99
- Compassionate Leave s104-106



Extra Resources

[Mondelez High Court Decision](#)

[Personal and Carer's and Managing Excess Leave Policy Template](#)

[Compassionate Leave Policy](#)

[Fair Work Information Statement](#)