

ABSENTEEISM / ABANDONMENT

IT IS FRIDAY, THE LONG WEEKEND IS LOOMING AND YOU REALLY NEED TO HAVE THE PROJECT FOR THE NEW CLIENT FINALISED AND OUT BY THE END OF THE DAY...

The project is an exciting one and you're anxious to make a good impression with the new client. You have been at the office since 6 am working, it is now noon and John, who is supposed to be helping you finalise things has still not turned up to work. This is not the only occasion this has happened. He seems to do it every time that you have a deadline - he just doesn't turn up? What should you do?

The issue of an employee failing to turn up to work, failing to make contact to let you as the employer know what is happening can be extremely frustrating and detrimental to the business. In some instances, employees simply do not come to work and are never seen or heard from again? What are your rights as an employer in such situations?

WHAT CAN YOU DO TO PREVENT THIS TYPE OF HASSLE?

The first thing is to ensure that at the interview you make it clear to the employee what your expectations for the position are. If you have strict deadlines which must be met, it is important that the employee is well aware at the outset, of your expectations. Next, does the employment agreement set out clearly when an employee can legitimately take time off. These are normally for holidays, statutory holidays and sick leave – sickness, bereavement and the like. The sick leave clause should make it clear that the employee must make contact at the earliest possible time on the morning that they intend taking sick leave and that they may be required to produce a medical certificate.

In the above case, we have an employee that has simply not turned up to work and he has done it before. It is important in this situation not to lose your cool and to dismiss the employee. You must remember to be fair at all times.

Fairness in the above situation would be to arrange for somebody to make contact with the employee to find out where he is and why he has not come to work. If the employee does not have a legitimate reason for not coming to work, then the matter will have to be raised formally with the employee upon his return to work.

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It is important that a meeting be arranged as soon as possible with the employee concerned to discuss his absence on an important day and the failure apparently to have a legitimate reason for the absence. If the employee has no excuse then it will be a matter that you will have to issue a warning in respect of. However, if something unexpected arose which made it impossible for the employee to contact you and that explanation is acceptable then that will be the end of the matter other than you reminding the employee that it is important for him/her to contact you as soon as possible.

If, on the other hand there has been no legitimate explanation then you will have to go down the warning track. If John was well aware that his help was absolutely necessary to assist with the project but he just took the day off to make his weekend longer, then that is totally unacceptable and would warrant a written warning which makes your expectations absolutely clear that if it happens again he may be dismissed.

ABANDONMENT

There are sometimes cases where an employee simply fails to show up for work and is absent from work for a couple of days and then reappears. There has been no contact with you and as far as you are concerned he or she has abandoned their employment. What do you do in this situation?

Some employment agreements have clauses which say that an employee who fails to turn up to work for three days without any explanation is deemed to have abandoned their employment and therefore the employment agreement is at an end.

Again, it is important before making the final step to terminate the employment agreement or rather to inform the employee that they have abandoned their employment, to carry out a fair process. A fair process would include trying to make contact with the employee, if this fails, sending a letter to the employee, if necessary by courier, asking for reasons for their failure to come to work and their failure to contact you. You should give a time for them to be at work to explain their absence.

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If the employee fails to attend the meeting then there is little more an employer can do than to write to the employee informing them that their employment is deemed to have been abandoned. In this circumstance, can the employer take action against the employee? Most employers will not be bothered with the time and money involved but it is possible under the Employment Relations Act for the employer to file a statement of problem in the Employment Relations Authority. An employee has obligations to give notice under an employment agreement to an employer and by abandoning their employment they have effectively resigned without notice. An employer can seek damages for the breach of the employment agreement or a penalty if it wishes to take such action.

CHECKLIST

To ensure both you and your employee know what each other can expect from the employment relationship you should:

- Discuss the expectations of the job at the initial interview and ensure that the employee understands;
- Have an employment agreement outlining what you expect in terms of the job from the employee;
- A clause stating that if sick leave is being taken that the employee must contact the employer at the earliest possible time on that day, say by 10 am;
- Have a clause setting out that if the employee is away for a continuous period of say 3 days then they will be deemed to have abandoned their employment;
- Following the initial absence, have a meeting with the employee and seek an explanation, if there is not an acceptable explanation go down the warning procedure;
- If there is an acceptable explanation remind the employee of their obligations to inform you as soon as possible as to why they are not at work;
- If the employee has not shown up for work for a day without any contact, try and contact the employee and if your efforts are not successful, and the absence continues then arrange for a letter to be couriered to the employee requiring their attendance at a meeting and an explanation for their absence;

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- If following the “abandonment”, you feel that you would like to take things further you may wish to consult your lawyer and file an employment relationship problem with the Employment Relations Authority.

For more information, contact LawWorks at the address below.