

HR AND EMPLOYMENT LAW IN EDUCATION

Long term absence FAQs

What are the options when it comes to maintaining engagement, offering alternatives – or moving to dismissal? Employment lawyer **Ian Deakin** answers common questions about long term sick leave.

1. Dismissal for non-engaged employee

What can you do if an employee is signed off long term sick, but is not willing to engage in conversation or attend occupational health (OH)? When can you start discussions on contractual review or dismissal?

Discussions should begin when the employer has concluded that a return to work is unlikely within the foreseeable future.

It is possible to dismiss an employee who has been, or will be, absent for a long period of time due to ill health to be fair on the ground of capability. However, you will need to demonstrate that you as the employer acted reasonably both in treating the long-term ill health as a sufficient reason for dismissing the employee and in the procedure it adopted to effect that dismissal.

You should firstly take steps to accommodate the employee and their reasons for failing to attend meetings. Reasonable adjustments may need to be made to the procedure – could the conversation take place at the employee's home or other convenient location? Might they require more notice of meetings than is provided for in your policy, or more time to prepare for meetings?

Where the employee is refusing to cooperate in providing medical evidence, or attending OH, they should be told in writing that a decision will be taken on the basis of the information available and that it could result in dismissal. Taking into account the medical evidence



available to you, you should consider whether or not a return to work is likely to occur in the foreseeable future.

If you decide to proceed in the employee's absence, you should invite written submissions from the employee or their representative about the possible dismissal and make clear, in any decision, that you have taken these into account.

2. Working from home

If an employee on long term sick leave has asked to work from home, do we have to agree?

If OH has recommended that the employee has a phased return by working from home, it is sensible to consider it as part of a phased return. However, there is no requirement to agree to permanent home working if this does not suit your requirements.

Ultimately if you do not agree to permanent home working, and they cannot return to work, then you can look to proceed to dismiss for capability.

3. Phased return and pay

If an employee returns to work on a phased return after long term sickness, does the employer have to reinstate full pay?

No – unless there is a more generous entitlement set out in the employee's contract or associated sick-pay policy, the employee's pay could be reduced proportionately to the reduced hours that he or she is working.

Depending on the nature of the return, it is possible that the employee will continue to be entitled to statutory sick pay (if the 28 weeks limit has not been reached) in respect of a day on which they do not work.



4. Alternative role

Can an employee on long term sickness be offered a less challenging role (and change in pay reflecting this new role) if a phased return not success?

Yes. If it looks like the employee will never be capable of fulfilling their old job, you should consider whether or not there are permanent adjustments that can be made to the job to enable them to perform their role. For instance, it may be possible to reallocate work to remove the part of the job that was causing difficulty, or to make the role part-time on a permanent basis.

You should also consider whether or not there is any other work or role that the employee can take on in the organisation that is within their capabilities. This does not mean that you need to invent a role that does not exist, but it might be reasonable to give the employee priority for any vacancies.

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