



Absence Management Case Study

A manager from Sleep Well & Co has noticed that one of her employees, who has been with them for just over a year now, has had multiple short-term absences. They speak with their HR department to conduct an initial investigation into the employee's absence. The investigation shows that the employees' absence is normally on a Friday or Monday. Each absence doesn't seem to be initially linked to one another, with the reasons being given as upset stomach, backache, sore throat and headache. The manager has concerns that their employee isn't necessarily always ill when they are off but trying to extend their weekend for one reason or another.

It's agreed that further investigations will be done. HR writes a letter to the employ explaining that they are concerned with the noted level of absence and requests for them to meet with the companies Occupational Health Consultant. Once the employ is back at work, they are extremely agitated and upset that they have been asked to see Occupational Health and refuse to attend. Deeming it unnecessary and says they are in good health. The manager is frustrated with the response and tells HR that they want to dismiss their employee, especially as they only have one years' service, so there's no harm done.

Given the circumstances and their being no particular pattern to the employee's absence, can Sleep Well & Co dismiss them at this stage?

Although the employee only has a years' service and Sleep Well & Co could dismiss their employee, there is still a big element of risk. Providing that they have a disciplinary and grievance procedure, they should follow this regardless of an employee's length of service. If they have not already done so, the next step would be to hold an informal meeting to discuss the situation. Explain their concern around the reoccurring absences and ask the employee the reason behind the absences. Discuss with them that it is company policy to see occupational health, that in order to help and support them, they need to determine if there is an underlying health condition.

What if the employee continues to refuse?

If the employee continues to refuse to see occupational health and/or refuses to allow Sleep Well & Co to obtain a medical doctor from their own doctor and there is no improvement in the meantime from their absence, Sleep Well & Co should look to take action under the disciplinary and grievance procedure.

How should this all be documented?

Sleep Well & Co should ensure that they retain all correspondence with their employee, especially their refusal to see occupational health and to write to their doctor. All information should be written in a factual, non-judgemental manner. All notes and records should be treated confidentially and in accordance with the Data Protection Act and GDPR.

If there is no indication of a genuine health problem and the employee is still refusing to see occupational health and not allowing Sleep Well & Co to write to their doctor to obtain more information, what should Sleep Well & Co do now?

Sleep Well & Co have a number of options. As previously stated above, although they could potentially dismiss their employee, there is a huge risk factor to this. Normally, when dismissing an employee,



the employer needs to be able to show that their absence amounts to gross misconduct (for example, if the absences reported weren't actually absences).

Their first option could be to give their employee an informal caution. Explaining that if there is no improvement to their absence, then any further absences will be dealt with under a formal procedure. Give the employee a timescale to improve by and ensure that you follow up on your timescale and sit down with the employee at this time.

The second option would be to follow a formal procedure. Whether this is a potential dismissal or a disciplinary warning, Sleep Well & Co must ensure that they comply with the ACAS code of practice. They should then invite their employee in writing to a formal meeting to discuss the situation. During the meeting, they should give her details of the alleged conduct, the number of absences and pattern of absence, explain that the absences are unacceptable and the refusal to see occupational health and contact their own doctor. The information gathered should be available to their employee to ensure that they have a reasonable opportunity to respond to the allegations (ideally, this will have been sent out prior to the meeting).

Following the meeting, the employee should be notified of the outcome. If they have been provided with a satisfactory explanation or the employee agrees to see occupational health and/or give permission to contact their doctor, the employer may decide at this time to take no further action. Assuming their employee gives no explanation for their absences, they could issue them with a first or final written warning, dependent on the seriousness of the problem. This should be notified to them in writing. If gross misconduct is found and they are dismissed, the dismissal letter should identify the reason for her dismissal and the termination date.

If Sleep Well & Co do not dismiss their employee, their attendance improves but later declines again, what can they do?

If the employee's absence deteriorates during the specified time of their informal discussion and/or their formal procedure, they can then take this to the next stated level. If however, it deteriorates after the specified time, Sleep Well & Co cannot move to the next level of the process and monitor absence again, following the disciplinary process.

If the employee is dismissed, what claims could they bring?

The employee, if dismissed without following the procedure, could bring successful claims for dismissal. They could also claim disability discrimination if their absences are related to a disability and Sleep Well & Co didn't attempt to investigate this possibility, and make the reasonable adjustments required. There also is the possibility that they could claim for a breach of contract, should they have been dismissed without notice or in breach of any contractual procedure.