Use and abuse of sick leave entitlements

An increasing number of employers are coming to us with gripes about how their employees are using and abusing sick leave entitlements.

There appears to be a prevailing attitude in New Zealand that sick leave is a "right" and that it should be treated almost an extension of an employee's annual leave. Although the minimum entitlement for an employee for sick leave is 5 days per year, this entitlement accrues so that an employee at any one time may have 20 sick days available to them. This can be a serious liability for an employer.

Case Study: Mary and John

Mary and John own a manufacturing business in Albany. They employ 19 staff and have 5 contractors working for them. On the whole, Mary and John feel that their staff work hard and that the company remunerates the staff well. Mary and John feel that there is mutual respect between them (as company directors) and the staff. Well, that is, apart from one employee.
Unfortunately, John has had an on-going issue with Ben. Although Ben's work performance has been satisfactory, he has taken more sick leave than any other employee. John has recognised a pattern of behaviour whereby Ben seems to works for 3-4 weeks and then takes 1-2 days sick leave.

John keeps meaning to meet with Ben to discuss this issue, but John's been so busy with operational aspects of the business that the meeting never eventuated. However, Ben has now not only run out of sick leave entitlement but he has no annual leave entitlement. This is, in part, because John agreed for Ben to receive annual leave to cover further sick leave requests.
Ben has just now called in sick (again!) and John has had enough. John and Mary go to see their employment lawyer to see what can be done. The lawyer looks through Ben's record of sick leave taken for the past 6 months and notes that he has taken 12 days off due to illness and sickness. John advises the lawyer that although John kept meaning to ask Ben for medical certificates, he never did, so there are no records of medical certificates for any of the sick leave that Ben has taken.

What should Mary and John do?

Do not fear, there is plenty that employers (such as Mary and John) can do in these circumstances.

Review the employment agreement:

The first port of call is for the employer to review the employee's employment agreement. This agreement will state what the employee is entitled to, and also what the requirements are with regards to requiring a medical certificate for sick leave. The Holidays Act 2003 must also be complied

with in this regard. The agreement may also contain a clause which sets out what an employer can do if there is long-term illness or sickness.

Decide what action to take:

Once the employer is aware of their rights and obligations, and understands the amount of sick leave that the employee has taken, they can then decide what action to take. It may be appropriate for a **meeting to be called with the employee** to discuss the sick leave and the employee's health. An employer may also be entitled to **require the employee to attend a medical examination,** so that a medical practitioner can provide information as to the employee's state of health and fitness for work.

Depending on what information is obtained at the meeting with the employee, the employer will then be able to decide what action to take. In some cases, a process towards an **oral or written warning**, or even **dismissal** may be appropriate. In other cases, the employer may require the employee to **follow new processes** with regards how sick leave is taken and whether it is paid (or unpaid as the case may be).

Important considerations:

The important thing for an employer to remember is that any action the employer takes must be **fair, reasonable and proportionate to the circumstances**. The employer must make sure that the employer follows a **proper legal process** at all times in order to avoid the affected employee being able to take a personal grievance against the employer.

If you require any assistance in preparing suspension clauses or conducting suspension and disciplinary action, please contact The Engine.

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