# Bird&Bird&Illness&incapacity

#### How to handle long-term sick employees?

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 $2 \; {}^{\text{Long-term work}}_{\text{incapacity}}$ 

 $3 \begin{array}{c} {\rm Obligations \ of \ employees} \\ {\rm and \ employers} \end{array}$ 

**4** Relapses

# 5 Possibilities for employers



# Figures Long-term sickness in Belgium



53% of Belgian employees have had a workplace absence of one month or longer

### 400,000 long-term 1/3 of cases are due to

absences in 2017

• 68.5% more than 10 years ago

psychological illnesses

Burn out, bore out, etc. •

#### Significant increase of (long-term) work incapacities

# 2 Long-term work incapacity

 $3 \begin{array}{c} {\rm Obligations \ of \ employees} \\ {\rm and \ employers} \end{array}$ 

4 Relapses

# 5 Possibilities for employers

4 & Illness & incapacity



# Long-term work incapacity Disadvantages for the company

No "immediate" additional cost but the absent employee stays on the payroll

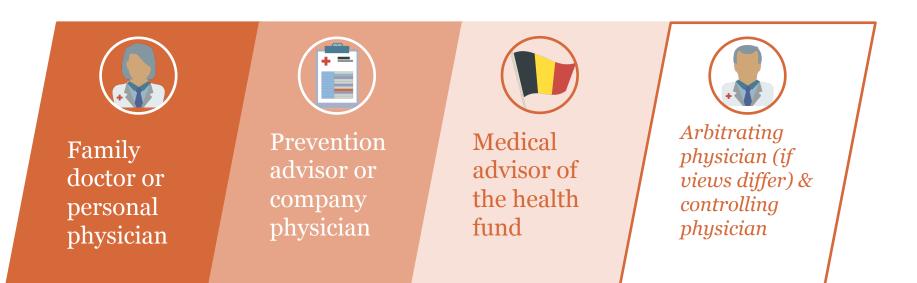
2 Possible return, sometimes after years

3 Organisational disturbance (return, replacement, work atmosphere)



File summary proceedings and obtain Court injunction

# Long-term work incapacity *Actors*



2 Long-term work incapacity

**3** Obligations of employees and employers

4 Relapses

5 Possibilities fo employers

7 & Illness & incapacity



Obligations of employees and employers What to do in case of long-term work incapacity

### **Employee obligations**

- ✓ Notify the employer immediately (cfr. Working regulations)
- $\checkmark\,$  Valid medical certificate
- $\checkmark\,$  Controlling physician

### **Employer obligations**

- ✓ Guaranteed salary (first 30 days)
- Respect the employee's right to privacy
- Reinstatement in previous tasks and benefits upon work resumption

2 Long-term work incapacity

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# **Relapses** Succession of work incapacities

### - without interruption(s)

- Only one period of work incapacity
- No new guaranteed on each renewal

# - <u>with</u> interruption(s)

- New work incapacity after work resumption
- New guaranteed salary (14 days of work resumption + other cause)

2 Long-term work incapacity

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4 Relapses

#### 5 Possibilities for employers



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6

# **Possibilities for employers** *Counter-examination by a controlling physician*



 Cannot be the prevention advisor – company physician



 Possible appeal of his decision on the work incapacity before an arbitrating physician



• Utility in case of long-term sickness? (e.g., burn out, bore out, etc.)

### Possibilities for employers Reintegration process



# *Reintegration process – reintegration assessment*



#### Procedure (1)

- 1. Reintegration <u>assessment</u> (prevention advisor)
  - Written report
  - Examinations + consultations
  - Possible decisions:
    - possibility or not to resume the (agreed) work
    - in the same tasks / adapted tasks / for other tasks OR
    - too soon to tell

- Deadline: 40 working days
- Appeal

### *Reintegration process – reintegration plan*



#### Procedure (2)

#### 2. Reintegration <u>plan</u> (employer)

- Possible consultations
- Content:
  - description of the necessary accommodations / adapted work / other work / training (work volume, schedule, etc.) + plan duration
  - no specific form but several "musts"
- Deadlines

# *Reintegration process – implementation + examples*



#### Procedure (3)

#### 3. Implementation of the reintegration plan, unless

- Employer refuses to prepare a reintegration plan:
  - Technically or objectively impossible; or
  - Cannot be carried out for duly justified reasons
- Employee refuses the reintegration plan

### *Reintegration process – implementation + examples*



#### Procedure (3)

#### 3. Implementation of the reintegration plan, unless

- Employer refuses to prepare a reintegration plan:
  - Technically or objectively impossible; or
  - Cannot be carried out for duly justified reasons
- Employee refuses the reintegration plan



Example one: administrative employee



Example two: truck driver

# Possibilities for employers Medical force majeure



- Immediate employment termination without notice nor indemnity in lieu
- Only if reintegration process leads to:
  - Reintegration assessment: definitively unfit for work + avenues of appeal exhausted
  - Valid refusal to prepare a reintegration plan
  - Employee refuses the reintegration plan
- Challengeable in court by the employee

# **Possibilities for employers** *Dismissal (with notice or termination indemnity)*

#### Risks (mutually exclusive)

#### **Discrimination on the basis of current or future health status** (6 months' indemnity)

- Difference in treatment Legitimate goal – means are fitting and necessary
  Burden of proof
- Case law: company organisational needs sometimes accepted as "legitimate justification"

Blatantly unreasonable dismissal -CBA no. 109 (3 - 17 weeks' indemnity)

- Grounds unrelated to (i) the employee's behaviour or capacities nor (ii) the business needs
- A reasonable employer would never have taken this decision
- ✓ Case law

Dismissal (with notice or termination indemnity)

#### Risks (mutually exclusive)

To avoid these risks:

**Discrimination on the basis current or future health sta** (6 months' indemnity)

Settlement

agreement

- Difference in treatment goal – means are fitting
- ✓ Burden of proof
- Case law: company organisational need sometimes accepted as "legitimate justification"

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A reasonable employer would never have taken this decision

Blatantly unreasonable dismissal -

emnity)

# Thank you & Bird & Bird

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