Bird&Bird&Illness&incapacity

How to handle long-term sick employees?

Jehan de Wasseige, Associate International HR Services

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

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

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

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4 & Illness & incapacity



Long-term work incapacity Disadvantages for the company

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

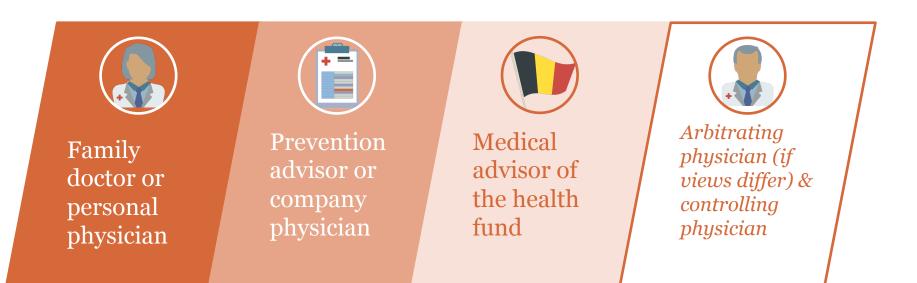
2 Possible return, sometimes after years

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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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

Jehan de Wasseige

Associate

Tel: +32 2 282 60 29 jehan.dewasseige@twobirds.com



Pieter De Koster

Partner

Tel: +32 2 282 60 81 pieter.dekoster@twobirds.com



twobirds.com

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