Sick Leave and Medical Certificates

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What the Basic Conditions of Employment Act says:

22. Sick leave. — (1) In this Chapter, “sick leave cycle” means the period of 36 months’ employment with the same employer immediately following—

(a) an employee’s commencement of employment; or

(b) the completion of that employee’s prior sick leave cycle.

(2) During every sick leave cycle, an employee is entitled to an amount of paid sick leave equal to the number of days the employee would normally work during a period of six weeks.

(3) Despite subsection (2), during the first six months of employment, an employee is entitled to one day’s paid sick leave for every 26 days worked.

(4) During an employee’s first sick leave cycle, an employer may reduce the employee’s entitlement to sick leave in terms of subsection (2) by the number of days’ sick leave taken in terms of subsection (3).

23. Proof of incapacity. — (1) An employer is not required to pay an employee in terms of section 22 if the employee has been absent from work for more than two consecutive days or on more than two occasions during an eight-week period and, on request by the employer, does not produce a medical certificate stating that the employee was unable to work for the duration of the employee’s absence on account of sickness or injury.

(2) The medical certificate must be issued and signed by a medical practitioner or any other person who is certified to diagnose and treat patients and who is registered with a professional council established by an Act of Parliament.

(3) If it is not reasonably practicable for an employee who lives on the employer’s premises to obtain a medical certificate, the employer may not withhold payment in terms of subsection (1) unless the employer provides reasonable assistance to the employee to obtain the certificate.

What does it really mean?

- From the moment an employee commences his employment, the sick leave cycle starts.

- This section does not apply to employees who work less than 24 hours per month for an employer. These employees will have to negotiate sick leave with their employers.

- An employee who works 5 days per week is entitled to 30 days every 36 months. An employee who works 6 days per week is entitled to 36 days sick leave every 36 months. Where an employee works Monday to Friday, plus every second Saturday, the employee is entitled to 33 (30 + 3 Saturdays) day sick leave.

- During the first six months of employment, an employee (this also applies to an employee employed on a fixed term basis for a period of 6 months or less) is entitled to 1 day’s paid
sick leave for every 26 days worked. If the employee needs extra sick leave, it will be in the form of unpaid leave.

- And employees employed on a fixed term basis for a period of say, 8 months? There is nothing in the Act that suggests that these employees are not entitled to all the sick leave afforded to them by the Basic Conditions of Employment Act. It may happen that an employee who works 5 days per week may be absent for reasons of illness for a period of 30 days. And the employer has to accept that – on condition that the employee is booked off by a medical practitioner.

- An agreement in terms of which an employee agrees to take not more than 10 (or any number of days less than the number of days to which an employee is entitled) days sick leave per year is invalid. On the first day of the seventh month, an employee is entitled to ALL his/her sick leave.

- Only an employee who is too sick to work, may claim paid sick leave. If the employer is in a position to prove that the employee was not sick, disciplinary steps may be taken against the employee.

- If the employee is sick for one or two days, the employer has to grant paid sick leave, even if the employee is not booked off by a medical practitioner.

- If the employee is absent for “more than two consecutive days” without a medical certificate, the employer does not have to pay the employee. This means that an employee needs to produce a medical certificate on the third day in order to receive his/her pay for the three days.

- May an employer require a medical certificate when the employee is absent on a Friday or a Monday, or the day before or after a Public Holiday? No! The Basic Conditions of Employment allows an employee to be “absent from work for more than two consecutive days or on more than two occasions during an eight-week period” without a medical certificate. An employee who does not work on Saturdays and Sundays, is NOT absent from work for more than two consecutive days. The employee is absent only on the Friday and the Monday (two consecutive work days) – and will only have to produce a medical certificate if he/she is also absent on the Tuesday. The second part of subsection (1) may also be used to justify this viewpoint. The employee’s absence on the Friday could be seen as the first occasion, his/her absence on Monday as the second occasion – which means that the employee has not been absent from work for... more than two occasions during an eight-week period.

- What is a medical certificate? It is a document issued and signed by someone who is certified to diagnose and treat patients and who is registered with a professional council. This may include dentists, psychologists, interns and nurses. Some sangomas or traditional healers do belong to a professional association, but as this is a voluntary association they are excluded as persons who may issue a medical certificate.

- What is the “status” of a medical certificate? A medical certificate constitutes indirect evidence of an employee’s illness. Where a medical certificate states no more than that the employee was examined by the doctor, and that the doctor “was informed” that the employee was unfit for work, the medical certificate cannot be accept as proof that the employee was in fact ill.
What can an employer do with an employee who abuses sick leave? It will depend on the employer’s disciplinary code and the employee’s disciplinary record. But that is a question that will be dealt with in another Labour Law for Dummies chapter.

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