

Short notes on:

WHAT ARE EMPLOYEES' AND EMPLOYERS' RIGHTS AND OBLIGATIONS IN TERMS OF SICK LEAVE IN SOUTH AFRICA?

Introduction

The Basic Conditions of Employment Act, No 75 of 1997 ("the BCEA") gives effect to the right to fair labour practices referred to in section 23(1) of the Constitution of the Republic of South Africa by establishing and making provision for the regulation of basic conditions of employment. The BCEA was specifically enacted to protect employees from, including but not limited to, exploitation, mistreatment, corruption and abuse within the workplace. The BCEA protects employees from the abovementioned negative circumstances and working environments by ensuring that all minimum terms and conditions of employment are being adhered to by employers. In that regard, the BCEA places strict duties and obligations on employers to comply with the minimum terms and standards for employees employed in the Republic of South Africa. The focus of this article will be employees' and employers' rights and obligations in terms of sick leave.

Many employees appear to not know their rights pertaining to sick leave and the limitations in respect of taking sick leave. Section 22 of the BCEA sets out the minimum terms and conditions for an employee who is ill and accordingly requires a day or days off work in order to recover from said illness. Hereinbelow we will set out the law as it pertains to employees' and employers' rights and obligations in terms of sick leave.

The sick leave cycle

Employees often tend to think that their entitlement to sick leave works on an annual one-year cycle, whereas in fact, sick leave works on a three-year cycle as per the BCEA. In terms of section 22 of the BCEA the sick leave cycle is a period of 36 months' continuous employment with the same employer. Notwithstanding the employee's three-year cycle entitlement to paid sick leave as mentioned above, provision is made for an employee's first six months of employment where he or she may take one day's paid sick leave for every 26 days worked. Subsequent to the period of six months continuous employment with the same employer lapsing, the employee is then 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 for the three year cycle in the event that the employee has exhausted his or her paid sick leave during the first six months of employment.

However, employees must be mindful of the fact that sick leave is an entitlement due to them for use only for when they are ill and not for any other reason. Employees should further be mindful that if a pattern of regular sick leave appears to occur, even though sick leave has not been exhausted and if the pattern affects business operations, this may have repercussions in respect of possible disciplinary action for abuse of sick leave, if the employer can prove same, alternatively incapacity should the excessive sick leave affect the business operations of the employer. Employees are encouraged to communicate reasons for excessive sick leave to their employer once it becomes evident that sick leave is excessive in a short period of time. Bearing this in mind, employees must note that an employer is not obliged to accept the word of an employee claiming to be sick and the employee is responsible for proving sickness by way of medical certificates which will be canvassed hereinbelow.

Medical certificates for sick leave

Many employees place a provision in an employee's contract that their employees need to provide a medical certificate for being absent due to illness for one day. However, in terms of section 23 of the BCEA, the employee is only required to furnish a medical certificate as proof of illness if they have been absent for three days or more i.e. more than two consecutive days, alternatively if they have been absent on more than two occasions during an eight week period. Accordingly, if the employee has been absent due to illness for more than three days, or absent on more than two occasions in an eight week period and does not provide proof of illness by way of a medical certificate upon request by the employer, the employer is not obliged to remunerate the employee for those days absent.

Further, employers often err by advising their employees that a medical certificate from a traditional healer is not a valid medical certificate. As per the BCEA provisions, a medical certificate from a traditional healer is valid as long as the traditional healer is a registered practitioner, who is defined as any practitioner certified to diagnose and treat patients and who is registered with a professional council that is established by an Act of Parliament. The Labour Court judgment in the matter of *Kievits Kroon Country Estate (Pty) Ltd v CCMA and others [2011] 3 BLLR 241 (LC)* has made it clear that an employer must accept a sick note or certificate from a traditional healer as long as the traditional healer is registered as mentioned above.

Conclusion

If you as an employee are uncertain of your rights in terms of sick leave, alternatively if you are an employer uncertain of your compliance in terms of sick leave and the BCEA, contact SchoemanLaw Inc for assistance in this regard.

