

How to deal with unauthorised absence

Introduction

Occasionally an employer might find itself faced with a situation where an employee is absent from work without explanation and without permission. The employee may fail to report for work for a day or two, or the employer might never see the employee again.

Attempt to contact the employee

The starting point for the employer is to try to contact the employee by phone on the first day of unauthorised absence to find out why they have failed to turn up for work.

A record of all attempts at contact should be kept, whether these comprise messages left on a voicemail, or with relatives or housemates, text messages, or whether there has simply been no answer when the employer tries ringing contact numbers that it has for the employee.

If these attempts to contact the employee prove unsuccessful, it is recommended that the employer also try to get in touch with the employee's stated emergency contacts.

If nothing has been heard from the employee by the second day of unauthorised absence, the employer should write to advise the employee that they have failed to attend for work on the relevant dates and have not provided any reason for non-attendance.

The previous attempts to contact the employee should be cited in the letter. The letter should be sent by email, as well as post, if the employer has the employee's personal email address.

The employee should be asked to contact the employer by a set deadline to confirm their position. Allowing a couple of days for contact should be sufficient and in the same letter the employee should be advised that unauthorised absence without good cause is a serious disciplinary offence, which may, depending on the circumstances, amount to gross misconduct.

Beware of treating the absence as a resignation

Some employers state in their letter that the employee's conduct in failing to attend for work implies that they intend to, or have, resigned and that, if the employee fails to make contact by the stated deadline, it will be assumed that this is the case and appropriate action taken, such as removing the employee from the payroll.

The employer will argue that a resignation can be inferred from the employee's actions or conduct as the employee has not resigned expressly, either verbally or in writing.

It should be noted that an employee's conduct in these circumstances will, in most cases, not lead to a finding by an employment tribunal that they have resigned. For a resignation to be implied by conduct, at the very least the employer is under a duty to make enquiries and to warn the employee of its intentions and potential outcomes.

In most cases, the contract of employment does not end until the employer accepts the employee's breach of contract in failing to attend work by actually dismissing them. This is because tribunals will generally hold that withdrawal of labour and the failure to contact the

employer are not themselves enough for a resignation and that the employee must have actually expressly communicated an intention to resign.

Therefore, employers need to be aware that a letter to the employee stating that they are assumed to have resigned is likely to be construed as an express dismissal.

The employer needs to show that it made sufficient attempts to contact the employee and that it gave adequate opportunity to get in touch.

This will involve trying to make regular contact with the employee by phone, text, email, contacting the employee's relatives to pass messages on, and writing at least a couple of letters, keeping records of all attempts to contact.

Employers are advised to incorporate their normal disciplinary procedure into this process.

This will involve writing to the employee to invite them to a meeting to discuss the unauthorised absence, setting out the possible consequences of this behaviour.

Investigate the reason for the absence

In many cases the employer will manage to contact the employee and more often than not they return to work. In this scenario, the employer should promptly hold a return-to-work meeting and ask the employee for an explanation.

If the employer is satisfied that there is an acceptable reason for the absence it may decide not to take any further action.

The employer should ensure that line managers take a consistent approach to unauthorised absence, to avoid allegations of discrimination or unfair treatment.

If it is not clear that there is a satisfactory explanation, the employer should treat the matter as a conduct issue and begin a disciplinary investigation.

Even if the employee says they were sick, the employee will need to explain why no contact was made with the employer, as required by the company sickness absence reporting procedure.

An investigation may uncover the fact that the sickness absence was not genuine, and there may therefore still be a disciplinary case to answer.

Carry out a fair disciplinary process

It is important that the employer follows its internal procedures and the principles of the Acas code of practice on disciplinary and grievance procedures before reaching a decision to impose a disciplinary sanction or dismiss the employee.

It is recommended that the employer undertakes an investigation before inviting the employee to a formal disciplinary hearing to discuss the matter.

Unauthorised leave can be a fair reason for dismissal, especially where the absence is for longer than a couple of days and the employer will be in a stronger position if it has made clear to employees that the potential consequences of unauthorised absence include disciplinary action and dismissal.

Treat unauthorised annual leave as a disciplinary matter

Sometimes an employer becomes aware in advance that an employee plans to take unauthorised leave. This is most often and commonly connected with annual leave requests that are legitimately turned down by the employer, where it subsequently comes to the employer's attention that the employee plans to take the time off work anyway.

In this situation, the employer should raise its concerns with the employee at an informal meeting, ensuring that a record of this is kept, or by writing to them. It should make clear that unauthorised absence is a disciplinary matter and could result in dismissal following and in line with the organisations disciplinary process.