

The six most common long-term sickness questions answered



From time to time every business is faced with employees who have long-term sickness.

It's a challenging time which affects productivity and staff morale but being armed with the answers to the most commonly asked questions will certainly ease the tension.

An employee is not fit for work but everyone on Facebook can see they seem to be either having a great time on holiday or playing sport! What should I do?

The key here is not to make a snap judgement. There's no legal requirement that an employee off sick must stay at home and in many cases, they may have been medically advised to take some exercise or to take a well needed break.

However, it would be misconduct for an employee to take sick leave dishonestly when not genuinely unfit for work.

What happens to holiday entitlement when an employee is on long-term sickness leave – especially if they are off for more than a year and the policy says holiday cannot be carried over?

An employee's statutory holiday entitlement of four weeks under the Working Time Directive continues to accrue while they are on long-term sick leave. If they've not been able to take

this leave because of sickness, it can be carried forward into the next holiday year regardless of what your own policy says – but it can only be rolled over for 18 months after the end of the holiday year in question, after which the employee loses this leave.

What happens if an employee refuses to cooperate with an occupational health assessment or consent to a medical report?

Whilst this seems a difficult one, you are entitled to base your opinion on the facts you have in front of you – even if they are insufficient to give a full medical position. If this happens, advise the employee that you will make the decision based on the facts available which could result in their dismissal, potentially on the grounds of ‘incapability’.

How do you deal with conflicting medical opinions about a long-term sick member of staff?

If you’ve got two medical reports that are conflicting, the failure to investigate further (perhaps by a third report) could render a dismissal unfair, particularly where there is a substantial difference of medical opinion. One alternative is to ask the doctor (such as a GP) who provided the first report to review his report in light of the opinion of the second doctor (which may be, for example, a consultant).

What help is there for small businesses that don’t have an occupational health service?

SJS HR Consulting have access to experienced Occupational Health experts. Please contact us for further advice and support.

Can I dismiss an employee if they are still receiving company sick pay?

The fact a dismissal is effected while the employee is still in receipt of company sick pay will not automatically make the dismissal unfair. However, this does not mean that it will be fair to dismiss once they have exhausted their sick pay entitlement. What is key here is the impact of their absence on the business and weighing this up against their rights to be treated fairly.