

Mackrell  
Turner  
Garrett



# Managing Absence

A Guide



Full Service  
Law Firm of  
the Year in UK

*England & Wales  
Dispute Resolution  
Law Firm of the  
Year 2012*



4500 Lawyers  
87 Firms  
57 Countries

**MACKRELL  
INTERNATIONAL**  
[www.mackrell.net](http://www.mackrell.net)

## INTRODUCTION

---

Employee absence is a significant cost to UK businesses. According to Department of Work and Pensions figures from January 2013:

- around 131 million working days are lost each year to sickness absence in Great Britain
- one million employees each year experience one or more spells of long-term absence (over 4 weeks)
- employers pay £9 billion a year on sick pay and associated costs
- each year, the UK economy loses £15 billion due to sickness absence.

As well as the financial issues involved, absence can cause significant difficulties for employers, including:

- increasing the workload for staff who are at work, affecting their morale
- the cost of bringing in temporary replacement staff
- missed deadlines
- damaging relationships with clients.

In managing absence, employers need to work within the legal framework created by legislation including the Equality Act 2010, the Health and Safety at Work Act 1974, the Employment Rights Act 1996 and the Data Protection Act 1998.

This brief guide covers some of the key points relating to managing absence but the expert advice of an employment law specialist, tailored to your particular circumstances, will always be of value.

## KEY POINTS

- A clear and legally compliant **sickness absence policy** will set out for employees their employer's approach and expectations and enable employers to manage absences fairly and consistently.
- **Recording sickness absence** helps employers to monitor absence trends and identify any absence that could be reduced by taking steps in the workplace, such as reasonable adjustments to enable disabled workers to continue to work or control risks to employees from work activities, particularly those in poor health.
- Employers can ask employees to **complete a self-certification form** on returning to work after an absence through sickness of up to seven days, and will usually have their own version of this form.
- Employees must give their employer a **doctor's fit note** if they are off work through illness for more than seven days.
- The note will say the employee is either **not fit for work or may be fit for work**. In the latter case, employers should discuss with the employee changes that might help them to return to work, such as reduced or different hours or tasks. The employee must be treated as not fit for work if there is no agreement on the changes.
- Employees receive **Statutory Sick Pay (SSP)** if they are too ill to work, which is paid by their employer for up to 28 weeks. The employee must have been off sick for four or more days in a row (including non-working days) to receive SSP. Employers can choose to pay more than SSP but cannot pay less.
- **Statutory holiday entitlement** is built up (accrued) while an employee is off work sick, no matter how long the absence may be. Any statutory holiday entitlement they do not use as a result of illness can be carried forward to their next leave year.
- Employees can choose to take **holiday instead of sick leave**, for example, because they do not qualify for sick pay. If an employee is ill just before or during their leave, they can take sick leave and take their missed holiday at a later date.
- **Keeping in touch** with employees can be an important factor in helping employees to return to work following sickness absence. It is sensible for employers to make it clear to employees (for example, by including in the absence policy) why the employer will keep in touch with them during an absence, how often and how you will contact them.
- **Return to work interviews** are good practice. In some cases, this will be a way to welcome the employee back but it also provides an opportunity to discuss underlying issues, for example if there is a pattern of short-term absences, or steps that might support them in their work and reduce the likelihood of absence.
- Making **reasonable adjustments** (which might be on a temporary or permanent basis) to working arrangements, premises, or jobs can enable employees to maximise attendance and productivity, e.g. where medication has side effects on an individual's stamina, mood and concentration levels, affecting their ability to do certain tasks.
- Employees who are off work sick for **more than four weeks** may be considered long-term sick. An employer may wish to dismiss an employee who is long-term sick, particularly where there is little prospect of a return to work and the business needs to replace them.
- The employee can take their case to an **employment tribunal** if they believe they have a case for unfair dismissal, if they have been employed for two years or more. In ill health dismissals, each case will be decided on its merits, as there is no special statutory provision covering sickness-related dismissals.
- Before an employer can **dismiss an employee** on long-term sickness absence, they must discuss with the employee if their health will improve and when they could return to work and look at ways to help the employee return to work, e.g. working flexibly or part-time, doing different or less stressful work, with training if necessary.
- Dismissals due to ill health are complex, so it is a sensible step for employers to talk to **an employment lawyer**.

To find out more about how we can help you, please contact us:



### Donna Martin

Donna is a solicitor in the Employment team of Mackrell Turner Garrett's London office, where she advises both employers and employees on a full range of contentious and non-contentious issues.

Her experience includes drafting employment contracts and handbooks, advising on grievance and disciplinary procedures and preparatory work prior to employment tribunals, including advising on the advantages and disadvantages of settling cases. She has particular expertise in settlement agreements and managing social media in the workplace.

**T:** 00 44 (0) 20 7240 0521

**E:** [donna.martin@mackrell.com](mailto:donna.martin@mackrell.com)

This guide is not intended to be an exhaustive statement of the law and gives general information only. You should not rely on it as legal advice. We do not accept liability to anyone who does rely on its contents. This guide was correct at time of publication and is not a substitute for legal advice.