

25 May 2016

White Paper Conference

Amanda Jones



Short and Intermittent Absences

When applying your attendance policy to disabled employees, when and by how much should you extend the trigger points because of short and intermittent absences?

How do you offer support but also manage overall attendance?

Summary of Leading Authorities on short term intermittent absences

- *Lyncock v Cereal Packaging Ltd* [1988]
- *International Sports Co Ltd v Thompson*
[1980]

Should you ignore disability related absences altogether?

- Short answer “No” you do not need to ignore these absences; **HOWEVER**
 - Consider what absence level is acceptable in the circumstances
 - Make deductions/allowances to a certain extent as this will be reasonable
 - Medical evidence is key

Adjustments to absences cases

- *Bray v London Borough of Camden* 2001
- *Ware v British Gas Trading Ltd* ET 2010
- *HMRC Commissioners v Whiteley* 2013

Employee must identify PCP

- *General Dynamics Information Technology Ltd v Carranza* 2014
- *Griffiths v The Secretary of State for Work and Pensions* 2015

Sparks and another v Department for Transport [2015]

- DFT trying to introduce new “trigger point”
- High Court found that current trigger point was incorporated into contracts by staff handbook

Decision Awaited

- *Donelien v Liberata UK Ltd*
- Knowledge of disability when short term intermittent absences – do not have to take every step possible
- Court of Appeal to hear this in January 2017

ACAS Guidance

- Find out reasons for absence
- Absence for no good reason may be misconduct
- RTW interviews promptly
- Medical evidence required
- Reasonable adjustments
- Improvements required
- Consultation with employee

Practical tips

- Patterns of absences and frequency shown on a calendar for ease of reference
- Computerised and up to date records
- Prompt investigations and return to work interviews
- Series of warnings but be prepared to adapt

Conclusions

When applying your attendance policy to disabled employees, when and by how much should you extend the trigger points because of short and intermittent absences?

- Consider the reason for the trigger you currently have
- Could this be extended/ revised?
- Consider medical evidence

Conclusions

How do you offer support but also manage overall attendance?

- Treat cases individually (but consistently) and with some sympathy
- Regular contact with employee

Contact

Amanda Jones

Partner

0330 222 1810

amanda.jones@mms.co.uk

Any
questions?

Very Smart People Hire Smart Lawyers

www.mms.co.uk