

3 OCTOBER 2023

Burness Paull

Absence management & mental health

When can an employer draw the line?

MORAG HUTCHISON, EMPLOYMENT PARTNER

When can you draw the line if an employee refuses to follow company absence procedures citing mental health as the reason and their behaviour persists despite offering all reasonable adjustments.

**Ways employees
refuse to follow
absence procedure**

**Duty to make
reasonable
adjustments and
what are they**

**What are your
options once all
reasonable
adjustments made**

**What are the risks
associated with the
options**



Fail to report absence



Missing certificates



Ignoring or refusing contact



No consent to OH report



Refusing to attend meetings
or engage in process



Grievance

Duty to make reasonable adjustments

**Does employer
have resources to
pay for them?**

**Will they be
effective in
overcoming/
reducing the
disadvantage?**

**Are they practical
for the employer to
make?**

**Will they have an
adverse impact on
the health and
safety of others?**



Text or email

Friend or family

Agree no reason

Cultural acceptance

OH input



Telephone consultation

GP report

General scenario



Grace period

GP call to employer

Collect from employee

Photograph on whatsapp

OH input



Neutral venue

Conduct at home

Friend or family

Agenda & questions

Conduct in writing

OH input



Agree method of contact

Agree timing of contact

Friend or family present

Extended response times

OH input



Agree method of contact

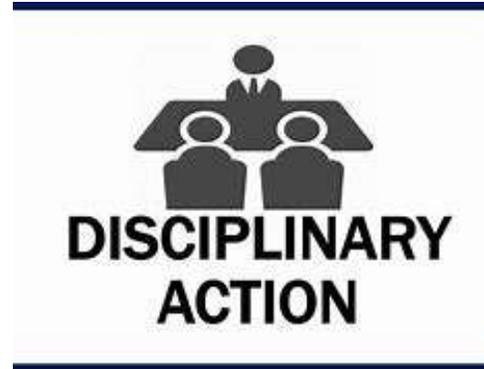
Neutral venue

Friend or family

Questions in advance

Conduct in writing

OH input



In order to show both the employee concerned, and other employees, that absence is regarded as a serious matter and may result in dismissal, it is very important that persistent absence is dealt with promptly, firmly and consistently.

ACAS Guidance

DISCRIMINATION
ARISING FROM
DISABILITY

FAILURE TO MAKE
REASONABLE
ADJUSTMENTS

UNFAIR
DISMISSAL



Is mental health likely to be a disability?

If it is, have you made reasonable adjustments?

Is what you are asking the employee to do reasonable?

What impact is their refusal to follow absence procedures having on your organisation?

What are you trying to achieve with your absence procedures? Do you have a legitimate aim?

Are there any other ways of achieving the aim?

Q&A

 Burness Paul