

Dismissal of an employee with a long term medical condition

Paula Cole – Squire Patton Boggs



Dismissal of an employee with a long term medical condition

- What do you do about the inherent fear of dismissing employees who cannot sustain a good level of attendance because of a long term condition?

- What if the employee cannot or simply will not engage with you?

- Employee – IT Manager in Accountancy practice.
- Employed for over 20 years.
- 1999-2000 - he first suffered anxiety and depression due to his marriage breakdown and was off work for 3 months.
- 2012 - concerns first raised by colleagues that he smelt of alcohol at work and he was referred for counselling.
- Concerns continued about his drinking but he continued to work and function as normal and so far as the company knew was still getting counselling.

- 2013 – he was involved in a serious car accident when he suffered a severe head injury.
- He started a phased return to work after 10 weeks absence but concerns were raised from the outset of him smelling of alcohol at work.
- A few months later he had a seizure and was off work for 3 weeks.
- 2014 – he came back to work and worked apparently normally for 6 months (albeit there was still an underlining issue about his drinking but otherwise everything was ok).
- He then had a second seizure and was diagnosed with epilepsy and after 3 months off work, he came back to work for 3 weeks
- He then had a third seizure (this time in work) and was off work again for another 3 months.

Continued – 2015 / 2016

- 2015 – he came back to work, this time he worked for a week before he had another seizure.
- He came back to work a month later and continued in work until he had a further seizure (again in work) in April 2016.
- He came back to work again in the summer of 2016 and worked until March 2017 when he didn't turn up for work and he didn't answer his phone.

- Throughout this period the Company suspected that he was still drinking excessively (he had turned up for review meetings smelling of alcohol and when at work his colleagues could smell alcohol on him). His performance at work was at best adequate but there was no performance management process.
- The various medical reports the Company commissioned throughout this period said that his drinking and the head injury were causing or contributing to the seizures.
- The medical reports also said that he continued to suffer from severe depression and he was using alcohol for support.
- The HR Manager knew that he lived alone following the breakdown of his marriage and was concerned when they could not get hold of him.

-
- The HR Manager went around to his flat and peered through his window.
 - She found him unconscious on the floor and called an ambulance and the police, who broke in.
 - He was hospitalised (initially in ICU) but is now at home recuperating.
 - When the HR Manager was in the flat she estimated that there were between 100 – 200 bottles of whiskey scattered across the floor.

-
- He is currently still off sick and the Company are wondering what to do next.
 - They have a PHI scheme but he has refused, so far, to fill in the forms and they can't progress the PHI referral without them.
 - They have commissioned further medical evidence and are waiting for that to come through.

Dismissal of an employee with a long term medical condition

- Employers can fairly dismiss on the grounds of capability, employees who cannot sustain a good/acceptable level of attendance because of a long term medical condition provided that they go through a fair process and make a reasonable decision in the circumstances.

So what would be:

- A fair process?
- A reasonable decision?

- Protected characteristic – disability.
- Reasonable adjustments.
- Right to request flexible working.

Reasonable adjustments could include:

- Making physical changes.
- Providing a designated parking space.
- Changing equipment.
- Working flexible hours or part time.
- Working from home.
- Adjusting performance targets.
- Changing role/duties.

- Key element of communication process.
- Return to Work plan:
 - Practical steps and workplace adjustments.
 - Support from managers and peers.

Keeping Updated on Medical Condition

- Employees who are off for long periods or who take frequent periods of short term sick leave should be encouraged to update their employer on their medical condition.
- Can be included in sickness absence policy.
- If they don't provide updated employer's can request information.

- In situations where the Employee's attendance record is unacceptable or Employer can no longer cope due to impact on the business.

Issues to Consider:

- Size of Organisation.
- Role of Employee.
- Absence record.
- Impact of absence.
- Medical evidence and prognosis.
- Alternatives to dismissal.

Alternatives to Dismissal

- PHI
- Early Retirement.

Dismissal of an employee with a long term medical condition

- Communication is key – so what if the Employee cannot or will not engage with you?

- Maintain your paper trail.

- If they cannot or will not attend a meeting at work:
 - Look at a neutral venue.
 - Go to their home.
 - Give them the right to be accompanied by a family member or friend.

- Arrange a telephone conference.

- Correspond in writing to request consent to obtain medical records.

- Invite written representations.

Global Coverage

Abu Dhabi	Houston	San Francisco	Africa	Israel
Beijing	Kyiv	Santo Domingo	Argentina	Italy
Berlin	Leeds	Seoul	Brazil	Mexico
Birmingham	London	Shanghai	Chile	Panamá
Böblingen	Los Angeles	Singapore	Colombia	Peru
Bratislava	Madrid	Sydney	Cuba	Turkey
Brussels	Manchester	Tampa	India	Venezuela
Budapest	Miami	Tokyo		
Cincinnati	Moscow	Warsaw		
Cleveland	Newark	Washington DC		
Columbus	New York	West Palm Beach		
Dallas	Northern Virginia			
Darwin	Palo Alto			
Denver	Paris			
Doha	Perth			
Dubai	Phoenix			
Frankfurt	Prague			
Hong Kong	Riyadh			

■ Office locations

■ Regional desks and strategic alliances

