

NEWSLETTER

Serbia: Abuse of Sick Leave



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Following the recent amendments to the Health Insurance Law, the issue of the abuse of sick leave has come into the public spotlight, triggering a number of discussions and dilemmas regarding the interpretation of the law's provisions and their application

in practice. Absenteeism, as it is otherwise known, is a significant challenge for employers in Serbia, particularly those engaged in labour-intensive operations. It is most commonly observed during periods of seasonal employment.

Sick leave misuse is the deliberate and intentional action of an employee to use sick leave for purposes other than those for which it was intended.

Abuse occurs:

- when sick leave is used for reasons other than those for which it was granted, i.e. when an employee feigns illness;
- when an employee does not follow the behaviour prescribed or recommended by a doctor and his or her actions slow down or delay recovery.

Our Employment Law has anticipated the abuse of sick leave as a violation of work discipline, giving the employer the possibility to terminate the employment contract for this reason.

However, what has created dilemmas in practice is the process of determining such abuse.

The employer's mere belief that an employee is abusing sick leave is not a legitimate and legally permitted reason for terminating the

employment contract. Even if there are obvious signs of sickness abuse, which the employer has obtained on his own, they cannot lead to a lawful termination of the employment contract.

Abuse of sick leave can only be determined by the competent health authority after a procedure to determine the employee's fitness for work has been carried out.

The Employment Law provides for the possibility for the employer to submit a request to the competent health authority to determine the employee's ability to work.

If the employer suspects the legitimacy of the temporary incapacity to work, he may send the employee, at his own expense, to an authorised medical institution designated by the employer for an appropriate analysis in order to determine the circumstances of the abuse of the right to absence from work due to temporary incapacity to work. An employee's refusal to comply with the employer's request for such an analysis shall be considered a breach of work discipline and the employer may terminate the employment agreement on this basis.

In addition to the Employment Law, the Health Insurance Law stipulates that the employer can control the employee's sick leave by requesting an assessment of the employee's state of health.

The assessment is carried out by the first-instance medical commission - if the assessment was made by the chosen doctor, and by the second-instance medical commission - if the assessment was made by the first-instance medical commission, and by three specialist doctors of the tertiary health care institution - if the assessment was made by the second-instance medical commission.

Considering all the above, in order to detect abuse, it is necessary for the employer, in case of suspicion, to send the employee to an authorised medical institution for the appropriate analysis.

Sick leave abuse identified in this way can be a legal basis for terminating an employment contract. For employers, the abuse of sick leave is a serious challenge in the work process. Employers have the right and the duty to take measures to protect their interests in accordance with the law, and in order to do so it is necessary to comply with the legally prescribed procedures for determining the violation of work discipline. Only in this way can the procedure for terminating the employment contract on this basis be considered lawful.

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