



# SOLUTIONS *for the* WORKPLACE

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## INDUSTRIAL RELATIONS NEWSLETTER

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Remember to call us if you need some help, we do not normally charge for phone advice.

### FREQUENT QUESTIONS WE GET ASKED:

- I have employees who do not have a contract of employment and what can I do about it?
- I have an employee who is repeatedly away from work on sick leave what options do I have?
- I have an employee who is often late for work how do I address the issue?
- Does an employee have to produce a medical certificate for sick leave?
- What can I do if the medical certificate only states “unfit for work”?

#### **I have employees who do not have a contract of employment and what can I do about it?**

To overcome this issue it is necessary to set out the terms of employment as they currently exist, for example, that the ordinary hours of work can be performed between 7.00 am and 6.00 pm and the days of ordinary work are Monday to Friday, the award coverage if there is one applicable, the position of the employee, that the work of the employee and the hours and days of work can be varied as determined by the employer.

It should also include the remuneration of the employee, the method of payment, superannuation details, a clause on discretionary benefits, confidentiality, reference to the employee following the policies and procedures of the Company as well as any other necessary clauses. For example; ending the employment, what constitutes serious misconduct or a clause regarding restraint as to working for other employers in the same industry.

If you need some assistance give us a call.

#### **I have an employee who is repeatedly away from work on sick leave what options do I have?**

It is necessary to start a process of advising the employee that they need to supply a medical certificate for absences and it is better that this requirement for sick leave becomes a part of the policies and procedures of the Company.

The employer should make the requirements of the supply of medical certificates compulsory for all employees and in some instances the employer can require a statutory declaration from the employee.

However there needs to be some caution as because if the employee is a carer then the employee can access their sick leave for the purposes of caring for a member of their immediate household.

If those issues fail then it is necessary to commence a process of warning the employee as to their continued employment.

I have an employee who is repeatedly late for work. How do I address this?

This is as serious as the previous issue and the result can be that if the employee works a particular part of the operations of the employer it can have the effect of affecting the production for the entire day of operations.

The fact is that all employees rely upon the attendance at work and the punctuality of employees.

A failure of an employee to attend work on time or even not to attend work can threaten the job security of every employee of the Company.

The requirements to attend work and to attend on time should be part of the policies and procedures manual of the employer including the contacting of the employer prior to commencing work if the employee is going to late or is not attending work for a day or period of time.

It follows that the employer must commence some process of warning the employee as to the continuation of their employment and it must be in writing.

#### **Does an employee have to produce a medical certificate for sick leave?**

The answer is no unless the employer has it as part of their policies and procedures and it is known to all employees that any period of sick leave must be supported by a medical certificate or some other form of proof that is to the satisfaction of the employer such as a statutory declaration.

#### **What can I do if the medical certificate only states "unfit for work"?**

There are some options here and usually the employer contacts the doctor and requests the type of illness. The reply will be that it is doctor/patient privilege and not to be disclosed.

An option is that the employer has in their policies and procedures manual that the employee must advise the medical practitioner that the Company requires that the type of illness be set out in the medical certificate.

Another option is to have the medical practice that the Company used for its pre-employment medical checks. When sending the employee to that practitioner for assessment, provide a list of duties and even photographs of the work the employee performs.

The employee even though on sick leave is still being paid and it is within working time and the employer can direct the employee to attend the medical practice during paid time.

This option must be used with some caution and should be limited to employees who are repeatedly away from work due to illness.

There is always the issue of a serious illness and the employer is entitled to know if the employee has a significant illness. However the issue of discrimination arising from that illness must be treated with caution.

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#### **Who Can I Contact for More Information and Assistance?**

If you would like to discuss any concerns you may have in relation to issues of employment or any other employment related issues you may have, please contact:

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**Or visit our web-site at [www.johntamplinconsulting.com.au](http://www.johntamplinconsulting.com.au)**

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