

Dismissing sick employees for long term absenteeism is okay if a reasonable employer would do the same

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Dismissing sick employees for long term absenteeism is okay if a reasonable employer would do the same

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The Scottish Courts found that it is potentially reasonable to dismiss a long term absentee employee for ill health even though Occupational Health indicated a potential return within the next couple of months.

The employee worked for Dundee council for 35 years when he was dismissed for ill health. In the year preceding his dismissal, he was off sick for 272 days with stress and depression. The council regularly sought medical reports from Occupational Health relating to his prognosis. The final report relied on by the council indicated that the employee would likely return to work within one to three months. However, when the council met with the employee who said that he did not think he was getting any better. As such, the council dismissed him because they could not see a 'light at the end of the tunnel'. The employee brought a claim for unfair dismissal seeking reinstatement.

The Scottish courts remitted the case back to the Tribunal due to procedural failings. However, they gave some guidance on dismissing long term absent employees:

- The question was whether any reasonable employer would have waited longer before dismissing the employee and if so, how much longer. The size of the employer, availability and cost of temporary staff, administrative and Occupational Health costs and whether the employee has exhausted his sick pay are all relevant factors;
- Employees' own opinions of their likely return to work should be taken into account;
- Employers should obtain medical opinions but bear in mind that the decision to dismiss should be decided by the employer, not Occupational Health therefore it is not necessary to pursue detailed medical examinations;

and

- Length of service is not automatically relevant although it can help assess the employee's nature in deciding whether he is likely to return to work as soon as he is able.

This decision gives some guidance to employees on how to make the tricky decisions regarding when employees go on long term sick absence. Helpfully enough, the decision confirms that an organisation's management, organisational and commercial needs can be taken into account.

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