



## XpertHR Podcast

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- Ellie Gelder: Hi and welcome to this week's XpertHR podcast with me, Ellie Gelder. After what seems like a long winter with its fair share of illness, we're now hoping to see the back of the cold and 'flu season. But we all know that sickness absence is a year-round issue for those in HR. According to XpertHR research, sickness absence costs around £450 per employee per year in the private sector and that figure rises to £820 per employee in the public sector. In the first of our two-part podcast series on sickness absence, I'm joined today by Employment Law Editor, Sarah Anderson, who is going to guide us through the practical steps of dealing with short-term sickness absence. And we'll also look at the potential for discrimination when managing sickness absence. So a good starting point for any employer dealing with short-term sickness absence is to have a clearly worded policy on short-term sickness absence, isn't it? [0:00:59.0]
- Sarah Anderson: Absolutely, this is key, and the policy will make it clear what is expected of employees and managers when the employee is off work ill, what the employee will be paid on sick leave, when the absence will trigger the formal absence management procedure and details of this procedure and how to deal with special cases like pregnancy and disability.
- Ellie Gelder: So, moving on then, the effective management of short-term sickness absence should really start when the employee phones in to say they're sick and unable to attend work? [0:01:27.3]
- Sarah Anderson: Yes, that's right, Ellie. So you'll want to find out the reason why the employee can't work and how long they think the absence will last. And you should also remember to check with them if any appointments need to be cancelled or work covered.
- Ellie Gelder: And it's a good idea, isn't it, to just have a standard form for recording that information? [0:01:42.8]
- Sarah Anderson: Absolutely. A template form helps to ensure consistency in approach.
- Ellie Gelder: And then for each subsequent sick day, the employer is going to need to require the employee to telephone their line manager in the morning? [0:01:53.5]
- Sarah Anderson: Yes. I think that's a fair requirement and one you'd expect to see in a short-term sickness absence policy. But of course managers should use their discretion when it comes to this. So, for example, it would be

appropriate to agree different arrangements with the employee if they are in hospital.

Ellie Gelder: So are employers entitled to ask for medical evidence in this scenario? [0:02:08.2]

Sarah Anderson: If an employee is sick for less than seven days, employers should accept self-certification. But beyond seven days employers usually require medical evidence and this will usually be in the form of a doctor's fit note.

Ellie Gelder: So that might say that the employee isn't fit for work, in which case they should remain off work? [0:02:28.2]

Sarah Anderson: Yes, exactly. Alternatively, the fit note will say that the employee may be fit for work if the doctor's recommendations are followed and these recommendations may, for example, be a phased return, amended job duties, altered hours of work or work place adaptations.

Ellie Gelder: And then moving on to the issue of pay during sick leave, we know that eligible employees are entitled to Statutory Sick Pay. [0:02:47.5]

Sarah Anderson: Yes, but employees are only entitled to Statutory Sick Pay or SSP where they are sick for at least four calendar days in a row and three waiting days have passed.

Ellie Gelder: And waiting days are the days on which the employee would usually be required to work? [0:03:05.3]

Sarah Anderson: That's right. And SSP is payable for 28 weeks in any one period of sickness absence and it's payable at a weekly rate set by the Government.

Ellie Gelder: Which has increased to £89.35 a week from 6<sup>th</sup> April this year. But employers can of course decide to offer enhanced sick pay, can't they? [0:03:21.7]

Sarah Anderson: Absolutely. Many employers offer contractual sick pay that is more generous than the statutory minimum.

Ellie Gelder: So if an employer decides to offer enhanced sick pay, it's a good idea, isn't it, to include conditions for receiving the pay in the sickness absence policy? [0:03:36.2]

Sarah Anderson: Yes, it is. Including a clause giving employers the right to withhold or suspend enhanced pay at their discretion will help employers to prevent any potential abuse of the scheme by employees.

Ellie Gelder: So when might an employer want to withhold enhanced sick pay, then? [0:03:50.7]

Sarah Anderson: Well you might want to do this where an employee hasn't complied with your notification and evidence requirements or where the employee's incapacity has been caused by participation in dangerous sports or activities.

- Ellie Gelder: Okay. So when an employee returns to work from sickness absence, to manage the sickness effectively, line managers should also update and check the employee's absence record. [0:04:11.2]
- Sarah Anderson: Yes. By checking the employee's absence record, the manager can see if their absence has triggered the need for formal action under their absence management procedure. It might also flag up a pattern to their absences. For example, frequent absences on Fridays or Mondays or immediately before or after bank or public holidays. But managers should remain open-minded and not jump to any hasty conclusions about the employee's absences.
- Ellie Gelder: But sickness absence for a pregnancy-related reason shouldn't be included when tallying an employee's sickness absence record for absence management purposes, should it? [0:04:40.7]
- Sarah Anderson: No, it shouldn't, Ellie. Employers run the risk of falling foul of discrimination law if they do this.
- Ellie Gelder: And managing short-term sickness absence can also have disability-discrimination implications? [0:04:53.2]
- Sarah Anderson: Yes. But disability-related short-term sickness absences are not always as obvious as long-term ones and managers really need to be alert to this and that's why it's so important that they ask their employees for the reason for their absence, doing this in a sympathetic way, of course.
- Ellie Gelder: So what should the line manager do where the employee's reason for the absence is an underlying health issue that could actually amount to a disability under the Equality Act 2010? [0:05:17.7]
- Sarah Anderson: Well the manager should refer the employee to HR or their occupational health department if they have one. This includes where an employee says that they are suffering from stress.
- Ellie Gelder: And that rather begs the question then what about where the employer doesn't have an HR or occupational health department, what should they do in those circumstances? [0:05:33.1]
- Sarah Anderson: Well as this is an area that could lead to claims of discrimination, it may be appropriate to get legal advice on the issue before taking any formal action against the employee, who might be disabled. It's also a good idea to read our line manager briefing on disability discrimination to understand what will amount to a disability and what adjustments need to be made for disabled employees.
- Ellie Gelder: Can we just pick up on that point, Sarah, about adjustments for disabled employees. So where a short-term absence is wholly or partly for a disability-related reason, there is a duty to make reasonable adjustments, isn't there? [0:06:05.5]
- Sarah Anderson: Yes, there is. So the trigger points for formal action may need to be modified to take proper account of the employee's disability and other adjustments may need to be made to the sickness absence procedures. You may also need to consider whether or not any changes to work arrangements should be made. So, for example,

changes in working hours or to job duties and working from home for a period.

- Ellie Gelder: And that takes us nicely to the formal stage of managing short-term sickness absence. So when is that stage activated? [0:06:32.9]
- Sarah Anderson: Well the formal stage is activated when an employee's absences reach a threshold defined by their employer. So we're talking about a trigger point here. And if you want to find out more about trigger points, you can listen to our podcast on absence rates and managing sickness absence.
- Ellie Gelder: And once a trigger point is reached, the next step is to call the employee to a formal meeting to discuss their absences, isn't it? [0:06:55.0]
- Sarah Anderson: Yes, that's right. And best practice is to have a meeting with the employee where you discuss their unsatisfactory attendance and try to establish the reasons for the poor attendance, obviously giving the employee an opportunity to put forward an explanation. Managers can also discuss and agree with the employee any steps or targets that will be put in place to help improve the employee's attendance.
- Ellie Gelder: And the manager should also inform the employee of the possible outcomes of the meeting. So, for example, a written warning. [0:07:19.4]
- Sarah Anderson: That's right. A possible outcome is a formal written warning and the employee being moved to a formal review period. The employer will be required to improve their attendance within a set time scale here and if they don't, they are usually moved to the next stage of the procedure and the same process is repeated, so a meeting is held and an opportunity for improvement is given.
- Ellie Gelder: And the purpose of a sickness absence management procedure is to facilitate improved attendance levels. But there's another important reason for following procedure, isn't there? [0:07:50.5]
- Sarah Anderson: Yes, there is. It may later be needed to justify a dismissal of the employee as fair and the reason for this is because while incapability related to ill health is a potentially fair reason for dismissal, the dismissal must also be procedurally fair and fall into the band of reasonable responses and, in practice, this requires the employer to investigate the reasons behind the employee's absences, discuss the matter with the employee and give the employee a reasonable chance to improve their attendance, which is essentially following a formal sickness absence management procedure.
- Ellie Gelder: That's been a really helpful whistle-stop tour of short-term sickness absence in the workplace. Thanks, Sarah. [0:08:27.3]
- Sarah Anderson: A pleasure, Ellie. Subscribers should also look out for our new and enhanced short-term sickness absence documents, including the short-term sickness absence policy, which we are publishing soon. The documents will cover everything that we have been talking about today.

Ellie Gelder:

Thanks again, Sarah. That brings us to the end of this week's podcast, which you've been listening to with me, Ellie Gelder. We're back again next Friday, but until then it's goodbye from us.