

Update for Employers

What is not sick leave?

22 March 2021

One of the subjects we are often asked about concerns personal (sick/carer's) leave and whether a request for such leave is valid, i.e. when it can be declined, and when to ask for a doctor's certificate.

We always recommend to clients that they use a well designed leave application form. We can provide a template on request which can be tailored to your specific needs.

Employers are entitled to reasonable evidence for personal (sick/carer's) leave and we normally recommend that they ask for a doctor's certificate for the employee or the person they are caring for if:

- the personal (sick/carer's) leave exceeds one business day; or
- the personal (sick/carer's) leave is on a Friday or a Monday; or
- on the day before or the day after a public holiday.

You may need to ask for other forms of evidence in certain situations concerning carer's leave.

If the employee has run out of paid personal (sick/carer's) leave, then we recommend that a doctor's certificate is requested for all sick/carer's leave regardless of duration.

If the employee does not comply with your leave application process requirements you may be able to treat it as absent without leave and make it unpaid.

Some things are not personal (sick/carer's) leave, for example:

- elective medical appointments and procedures
- non-emergency dental appointments
- non-emergency pregnancy appointments (pregnancy is not an illness)
- doctor's appointments (unless the employee is unable to work and this is the reason for seeing the doctor)

*But ...*some things become sick leave if a medical condition, regardless of how it is caused, renders an employee physically unable to work. This would include days of recovery time taken off following a cosmetic surgery or a sports injury, for example

There are many grey areas as you might expect so please consult us on individual cases, as required.

An employee's request for leave without pay without them providing the reasonable evidence that you may require is not an entitlement or a workplace right, so this should only be granted if the employer is willing to do so.

Taking leave without pay, without authorisation by the employer, is a breach of the employment contract and you may be able to take disciplinary action, if appropriate.

We hope this general information is of use to you. As always, please don't hesitate to contact us for advice on specific matters, as required.

Kind regards

Ian Alcock
Managing Director
HR Advice Australia

DISCLAIMER: HR Advice Australia provides these updates and reminders for general information only and they must not be used for any other purpose. These updates and reminders should not be relied upon as definitive advice applicable to your organisation and you should contact HR Advice Australia if you need any specific guidance.