

## Employer's responsibility concerning sick leave

### 1) Employee's obligations in case of illness and the ensuing protection

- **Employer's information and the CNS [National Health Fund]**

When an employee is unable to work, he must inform his employer on the same day, in person, or through an intermediary, orally or in writing. He must moreover submit a medical certificate to the employer by the 3<sup>rd</sup> day of absence at the latest.

There is an exception, however, in case of emergency hospitalization of the employee: the latter will then have 8 days to submit his certificate. If the certificate is submitted within that period, it will render any notice of dismissal served in the meantime null and void.

The employer must receive the medical certificate within the 3<sup>rd</sup> day of absence at the latest, so the date of receipt shall not be deemed to be the date of the postmark. This 3-day period is a prefixed deadline, which means that no extension is possible, even if the 3<sup>rd</sup> day falls on a Sunday. The same obligation exists in the event of extended illness (identical deadlines).

If the incapacity for work lasts only one or two days, the employer is free to request a certificate to justify the absence, provided this is indicated in the contract of employment or in the company rules.

In parallel, the employee must send a copy of his certificate to the CNS, within 3 days (2 days in case of extension), but this time, the date of receipt shall be deemed to be the date of the postmark. Please note that the CNS may impose fines on employees who do not comply with this deadline.

- **Protection against dismissal**

To be protected against dismissal from the first day of absence, the employee must fulfil the two obligations explained above, i.e. inform his employer on the 1<sup>st</sup> day, and send a medical certificate by the 3<sup>rd</sup> day at the latest.

The employee is protected against dismissal from the moment that he informs his employer until the expiry of the 3<sup>rd</sup> day of absence. This temporary protection will be confirmed subsequently, when the medical certificate is submitted, on the 3<sup>rd</sup> day at the latest.

If the medical certificate is not submitted by the 3<sup>rd</sup> day of absence, the temporary protection conferred when the employer was informed shall become null and void, and the employer will again be entitled to dismiss the employee.

Conversely, the employee may submit a medical certificate directly, without informing the employer in advance. In such a case, the employee will benefit from protection against dismissal from the moment that the employer is in possession of the medical certificate.

Thus, if the employee does not inform his employer, but submits a medical certificate on the 3<sup>rd</sup> day, he will be protected only as of said 3<sup>rd</sup> day. This means that the employer may proceed to dismiss him during the first 2 days of absence.

Under the foregoing conditions, the employee is protected against dismissal during the period of incapacity for work, for up to a limit of 26 weeks. Please note that this period of protection will be reset each time the employee returns to work. During this period, the employer may not dismiss the employee without notice, nor call the employee for a preliminary interview for dismissal with notice, nor dismiss the employee for gross negligence prior to the incapacity for work.

## 2) Remuneration during sick leave

When an employee is unable to work, the employer is required to continue paying his full salary for the first 77 days of incapacity. The employer will subsequently be reimbursed 30% of this remuneration charge by the employers' mutual insurance.

After these 77 days, the CNS will take over from the employer and pay the employee directly for the sick days.

### Employee's contribution when the employee is paid by the CNS

The earned income taken into account to determine the sickness cash benefit corresponds to the basic remuneration as well as to the supplements and accessories (e.g. commissions and special availability allowances), provided they are payable monthly in cash, with the exception of overtime pay.

This definition has the effect of excluding the base remuneration in kind and all gratuities that are not paid every month (e.g. the bonus). Furthermore, the compensation may not be less than the statutory minimum wage nor exceed said statutory minimum wage, i.e. €9,992.95 (index: 794.54) fivefold.

In light of the foregoing, the employee may receive an allowance that is less than his usual salary when paid by the CNS. The question then arises, whether compensation has to be paid by the employer:

- During the first 26 sick days, no salary compensation has to be paid by the employer.
- Conversely, when the employee has been ill for 6 consecutive months and is paid by the CNS, the employer must compensate the loss of salary for the employee whose remuneration exceeds €9,992.95, or who receives benefits in kind or other wage elements that the CNS does not cover.

### 3) Medical examination of the sick employee

The medical examination may be carried out at the request of the employer on the one hand, and at the request of the Contrôle médical de la sécurité sociale (CMSS) [Social Security Medical Inspectorate] on the other.

- **By the employer**

The employer may ask his sick employee to undergo a medical examination by a doctor of his (the employer's) choice. If the employee refuses to undergo this examination without valid reason, he will lose the protection against dismissal.

Conversely, if the employee undergoes the examination, the medical certificate drawn up by the doctor chosen by the employer will not take precedence over the certificate submitted initially by the employee. The employer will then have to obtain the opinion of a third doctor to decide between the other two. It is only if the third doctor concludes that the employee is fit to work that the employer may validly proceed to dismiss the employee, with notice, without waiting for the protection period to expire.

- **By the CMSS**

Since 1 September 2015, if the CMSS ascertains that the employee is fit to work, the employee's medical certificate is invalid. Before this date, the opinion of a third doctor was also required to rebut the presumption of incapacity established by the employee's medical certificate. In such a case, the CNS takes a **refusal decision**. This decision will be served to the employer, enjoining him not to pay any longer the salary of a sick employee who would no longer return to work (even if the employee produces new medical certificates subsequent to the date of notification). The right to maintain full pay will consequently cease for the employee in such a situation.

The employee may lodge an appeal with the steering committee of the CNS within 40 days of notification, then before the labour courts.

Please note that protection against dismissal will cease after 40 days if the employee has not opposed this decision. The employer who decides to dismiss his employee will therefore not have to wait until the end of the 26-week period.

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