



Guidance for Employers

Certified Sick Leave while on Holiday:

Sick leave is generally accepted as time off from work due to illness. It can either be certified or uncertified.

Uncertified Sick Leave

Uncertified sick leave is leave taken without proof of a medical certificate. There is no provision in law for uncertified sick leave. Therefore, an employer is not legally required to permit employees to call to say they are unavailable for work. However, most employers will recognise that employees, on occasion, will be unavailable for work due to illness and make a provision for such, most often making six (6) uncertified days available for use, but this number can vary.

Additionally, there is no legal requirement for an employer to pay an employee who is away for work due to illness. Issues of payment for sickness must be addressed in either contracts of employment, collective agreements, or employee handbooks.

Certified Sick Leave

Certified sick leave is taken by an employee, where the employee provides the employer with a certificate, from a medical practitioner indicating when the employee should be fit to resume work.

As the payment of a sick leave benefit is not legislated, employers devising and/or seeking to restructure sick leave benefit packages are guided primarily by what is stated in the employment contract, current collective agreement and established custom and practice.

Sick Leave while on Holiday

There is no legal requirement that vacation leave should be interrupted to allow an employee to proceed on sick leave. The Holiday with Pay Act prescribes that employee proceeding on vacation leave should receive payment prior to proceeding on leave. Where an employee has already been paid for time off, the employer cannot be forced to treat the vacation leave as an alternative type of leave. To further cement this point,



when an employee signs and submits a NIS Claim for Sickness/Injury Benefit form, they witness to the fact that "I will not claim or receive benefit in respect of a period during which I was working for my employer, working for another employer, gainfully employed or self-employed or receiving vacation pay." The NIS also regulates that sickness benefit is also not payable if the person is on holiday or receiving holiday pay.

One caveat is that where the employee falls sick immediately prior to vacation, or even on the first day of vacation, then the employer should cancel the vacation leave and allow the employee to proceed on sick leave. The vacation leave can then be rescheduled. It is generally accepted when vacation leave has begun; the presentation of a sick leave certificate cannot break its continuum.

In addition, since the sick leave cannot be taken after the vacation leave is finished, it becomes null and void. It is possible for an employee to proceed on sick leave at any point in time prior to the start of their vacation or up to the start date of their vacation; this however is at the discretion of the employer.

Sick leave and Public Holidays

Sick leave is recorded by calendar days. On the sick leave certificate, the doctor will indicate when the employee should be fit to resume work and that is the date the employee should return, regardless of whether public holidays fall within the period. Calendar weeks are counted inclusive of public holidays and therefore the leave is not extended, should a public holiday fall during the period.

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