

IN SICKNESS **AND IN HEALTH**

by Elmien Wehncke



Of all the categories of leave, sick leave raises the most questions. When is it due? Is it paid or unpaid? What is a valid medical certificate? Who should pay for medical treatment? What are the employer's rights and responsibilities?

Sectoral Determination 13 regulates leave in relation to farm workers.



When is it due?

During the first six months of employment, paid sick leave is calculated as one day paid sick leave for every 26 days worked. In a 36-month leave cycle, an employee is entitled to 30 days' paid sick leave (if the employee works five days per week) or 36 days' paid sick leave (if the employee works six days per week). This leave cycle commences, irrespective of a probation period, on the first day of employment and paid sick leave taken during the first six months of employment can be deducted from it.



Paid or unpaid?

First, is paid sick leave due? If yes, the employer must determine whether a medical certificate is needed.

1. A medical certificate has to be presented if an employee is absent from work on more than one occasion within an eight-week period or for more than two consecutive working days.
2. A medical certificate is not needed if an employee is absent from work on one occasion for two or fewer consecutive working days outside an eight-week period.

If paid sick leave is not due, there are two options:

1. process it as unpaid leave
2. process it as paid leave and deduct it from the employee's annual leave.



Use of unpaid leave

When an employee needs to take excessive amounts of sick leave because of a serious illness or injury and the employee's sick leave is exhausted, it can create operational difficulties for the employer. Unpaid leave is at the sole discretion of the employer, as it is not mentioned in the Sectoral Determination. Employers should therefore implement their own policy with regards to unpaid leave. Should the employer not have such a policy in place, we strongly advise employers to consider granting an employee unpaid leave if he or she is ill, especially if the employee's ill health is temporary with a good chance of recovery.

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In granting unpaid leave, the employee remains in the employer's employment, but is not remunerated. The employment contract is not suspended or terminated and the employer can temporarily appoint an employee to perform the incapacitated employee's duties until the employee can resume his/her duties.



Valid medical certificate

1. A medical certificate must state that the employee was unfit to work. It is not a valid medical certificate if it only states that the employee attended the clinic, as it only proves where the employee was that day, but does not entitle the employee to paid sick leave.
2. A medical certificate may only be issued by a:
 - medical practitioner

- clinic nurse practitioner
- traditional healer (registered with the Traditional Healers Association)
- community health worker
- psychologist
- any other person who is certified to diagnose and treat patients and who is registered with a professional council established by an Act of Parliament
- any other health professional authorised to diagnose medical conditions.



Information on certificate

Ethical Rules of Conduct for Practitioners registered under the Health Professions Act, provides the following main requirements:

- name and capacity of the practitioner
- name of the patient
- date of examination
- exact period of recommended sick leave
- date of issue.



Who should pay?

A farm worker can request the employer to pay for his/her medical

treatment, but the employer can deduct these payments from the employee’s pay. The Sectoral Determination is very clear on this matter and states in clause 22(5) “Where an employer, at the request of the farm worker, pays fees for a farm worker’s hospital or medical treatment, the fees paid may be set off against the worker’s pay”.



Employer’s rights and responsibility

An employer has the right to issue an employee with a warning as per the employer’s disciplinary code if an employee:

1. Fails to inform the employer of his/her intended absenteeism or sick leave.
2. Does not present a medical certificate when obliged to do so. In this case, the employer can issue the employee with a warning and has no obligation to pay the employee for days he/she was absent and had not presented a medical certificate for:

An employer has the right to consult an employee regarding incapacity and how it affects continued employment.

ABUSE OF SICK LEAVE

An employee can abuse sick leave by being sick regularly just outside the eight-week period, or regularly on a Monday or Friday, or a day following a public holiday. The employer can identify sick leave abuse by spotting a pattern, after which it should be addressed and the employee reprimanded.

A medical practitioner’s medical certificate is not nec-

essarily beyond question and employers should contact the medical practitioner if the employer suspects sick leave abuse. Some medical practitioners welcome this conversation because of lost or stolen sick note books where the medical practitioner did not write the sick note.

Sick leave is only due to employees genuinely too ill to

perform their duties. When an employee abuses sick leave, the employee can be charged with absenteeism and dishonesty.

Clear rules and guidelines ensure that friction and misunderstandings are kept to a minimum, which promotes not only productivity, but also a positive working environment. Labour risk needs to be managed in a proactive manner.

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