

Advice Portsmouth

Capability Factsheet

A Capability Dismissal can occur for three different reasons: Sickness and Injury, Qualification and Inability to perform the job. This factsheet sets out how these dismissals can occur and the steps your employer should take.

Sickness and Injury

A Capability Dismissal for Sickness will fall into one of two categories. These are long term and intermittent absences.

Long Term

The basic question with long term absence is whether in all the circumstances the employer should be expected to wait longer for the employee to return and if so how long. There is no fixed rule and every case is different.

An employer should discuss the situation with the employee and seek to find out the true medical position before deciding. An employer should look to gain access to a medical report through a company doctor or Occupational Health and an employee can provide their own report from their GP.

Any decision to dismiss should be based on

- 1) Nature and likely duration of illness
- 2) Need for the employee to do the job they were hired for and the difficulty of covering the absence
- 3) Could the employee's duties be varied so they take on another

role they can manage with their condition?

- 4) Company can also consider whether any contractual sick pay has run out and the employee's length of service.

If an employer fails to manage a long term absence correctly they could be claimed against for unfair dismissal or discrimination.

Intermittent Absences

An employer must make clear to an employee the level of attendance expected before considering dismissal. The disciplinary process should be used but if it becomes clear there is an underlying medical condition then an employer should look to use the long term absence rules.

When considering dismissing for intermittent absences an employer should consider the following factors.

- 1) Length of absence and periods of good health
- 2) Likelihood of future absences
- 3) Nature of the employee's job and the affect the absences have
- 4) Consistent application of absenteeism policy.

Injury Dismissal

An employee can be dismissed if they suffer some injury or loss of faculty

which makes it impossible or dangerous for them to perform their job.

When considering a dismissal in these circumstances an employer should consult with the employee on the impact of the injury, whether any reasonable adjustments could be made to the current job to enable the employee to continue or whether a suitable alternative vacancy can be offered to the employee.

Qualification Dismissal

A qualification relates to any degree, diploma or other academic, technical or professional qualification relevant to the position which the employee holds.

If an employee loses a qualification necessary for a job e.g. their driving licence then it may be fair to dismiss for this reason.

A Qualification can become necessary after an employee has started the job through new technologies or ways of working and in this case the employer must act reasonably to give the chance for the employee to gain the qualification before looking at dismissal if the need for the new qualification can be properly justified by the employer.

Incompetence Dismissal

These occur where an employee is incapable of doing the job to the standard expected by the employer.

In order to dismiss on this ground, the employer must carry out a proper and adequate investigation as they need to establish and confirm that they have a reasonable belief that the employee is unable to do their job.

Before dismissing an employee in these circumstances an employee should be made aware of the issue, given time to

improve and warned of the consequences of failing to do so.

Appeals

All of these dismissals come with the right for the employee to appeal against the decision and if dismissed an employee should in their letter of dismissal be informed of the process for appealing against the decision that has been made. To appeal you will need to show good grounds for doing so.

Employment Tribunals

After an appeal an employee may have the option of going to an Employment Tribunal. With regards to these dismissals if an employee wants to look at an Unfair Dismissal claim then they need two years' service except if the claim is one of discrimination and any claim must be made within 3 months of the dismissal. If you are in this position then please ensure you seek advice and assistance. You can contact us on 023 92794 340 or email us advice.portsmouth@theyoutrust.org.uk.