

Medical Leave – Ask The Expert



While it can be difficult to wait for an employee to return to work after their medical leave takes longer than originally presumed, you do not have grounds to terminate.

You must acknowledge all valid medical documentation, maintain the employee's status as "on leave", and communicate clearly in writing that their recall is deferred due to medical reasons.

QUESTION

Recently, an employee provided me with a doctor's note in response to a recall request saying they are unable to return to work within the time frame I expected. Can I terminate this person because they failed to return or should I go to the next person on the recall list?

ANSWER

If the recalled employee has provided valid medical documentation showing they are temporarily unable to return to work, you cannot terminate their employment solely on that basis.

EXPLANATION

Here's a breakdown of your options and obligations:

1. Medical Inability to Return to Work

Under the CLC:

- Employees have protection from dismissal due to illness or injury, particularly if they are on a medically certified leave.
- The law requires employers to accommodate medical leaves, unless doing so would cause undue hardship.

This means the employee remains employed but on a medical leave status.

2. Recall Rights During Medical Leave

Recall rights are not automatically forfeited just because the employee is unable to return right now:

- If the employee was recalled but is medically unable to report, you should document the refusal as medical leave rather than abandonment or refusal of work.
- Their place on the recall list may remain “frozen” until they are medically cleared to return.

3. Can You Move to the Next Person on the Recall List?

Yes. Since the recalled employee is unavailable:

- You may move to the next qualified person on the recall list to fill the position in the interim.
- The original employee’s recall rights remain intact, assuming their medical condition is temporary and recovery is expected.