Stress Leave



Tom Stefanik discusses stress leave as part of the Torkin Manes Legal Point Video Series.

Q. One of your employees calls or emails that they are off today due to "stress". That employee provides you with no further information. What can you do or what should you do in the circumstances?

The answer to this question will depend on a number of facts. Here are some considerations:

- Does this employee have a past record or pattern of calling in sick due to "stress"?
- If so, are you suspicious of these absences?
- Maybe you find that they often occur on a Monday or a Friday or just before or after a scheduled vacation.
- Are these absences followed shortly after expressions of displeasure with the employee's performance or after a negative performance evaluation?
- If the employee has used or exhausted their emergency leaves under the *Employment Standards Act* and you don't already have a policy or practices with respect to requesting reasonable proof when an employee takes an emergency leave absence, you should consider creating one.
- Are you receiving negative feedback from other employees who are asked to fill in or take over the absent employee's responsibilities? If so, you may have a serious organizational issue to review.
- Under your company policies and procedures, is this a paid or unpaid leave or is it discretionary on the company's part? Do you know?

All of these factors are relevant to consider in determining how to respond to this situation. Absences such as this, which happen on very short notice and in which the duration is completely unknown, are the most difficult to manage from an operational point of view, whether you're an owner, an HR manager, or a supervisor. I think you'll agree that this type of absence can have very serious consequences if it is not managed and handled properly. Recent case law even suggests that "stress" leave may be compensable as a workplace injury in the appropriate circumstances. Alternatively, depending upon the employee's medical state, the employer may be required to accommodate the employee if there is a disability as defined under the *Human Rights Code*. Over and above any disability issue, there also is potentially the prohibited ground of "family status" under the *Human Rights Code* under which an employee may claim discrimination if he/she is disciplined or otherwise treated

differently because of this absence, if the absence involves child care responsibilities.

All of these issues, individually and collectively, can get extremely complicated and unfortunately, Human Resource Managers, Supervisors and Owners must make decisions on these issues very quickly, failing which, valuable information may either not be obtained or the employer may be deemed to have condoned any misconduct by the employee.

If any of this sounds familiar, and you’re not sure how to deal with it, now would be a good time to talk to a legal professional.

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