Termination Alongside Time Off Request – Ask The Expert



Once a medical note is provided, the employer is on notice of a potential disability and has a duty to accommodate to the point of undue hardship.

The timing of termination can create the impression that the medical issue was a factor, regardless of intent.

QUESTION

We have an employee on a performance improvement plan who was also involved in a harassment incident. We documented discipline and advised that failure to improve could lead to termination. We were at the final stage when, the next day, the employee submitted a doctor’s note for two weeks off for medical reasons. Would proceeding with termination now expose us to a human rights complaint?

ANSWER

Potentially, yes. Terminating employment immediately after receiving a medical note can expose an employer to a human rights complaint based on disability (or perceived disability), even where performance and conduct issues exist.

EXPLANATION

Termination may still be defensible if you can demonstrate that the decision was already made or inevitable, that performance and disciplinary issues were well documented, that the harassment incident was properly addressed, and that the employee had a clear opportunity to improve.

A lower-risk approach is to pause the termination while the employee is on leave, avoid communicating a termination decision during that period, and resume the process upon return. If termination proceeds, ensure it is clearly supported by prior documentation and unrelated to the medical leave.