



The HR Edit

Series 1, Episode 4: **Sickness absence 101**

[Music]

Helen:

Hello and welcome to the HR Edit. South East Employers brand new podcast taking a look at those common and often tricky HR questions.

The podcast is free to listen to, you can find it on Apple Podcast or wherever you get your podcast and on our website at www.seemp.co.uk/thr-edit, which is also where members will find any related resources mentioned in our episodes.

This podcast is not just at HR experts, but it can be a useful refresher. We have created it with managers in mind as well to help them navigate through some of the complexities of people management and reduce some of the potential pitfalls.

With me today we have our favourite HR expert, an employment and people insight manager at SE Michelle. Hi Michelle.

Michelle:

Hiya.

Helen:

And SEE's business development manager Sarah. Hiya Sarah.

Sarah:

Hello.

Helen:

So, Michelle, today we're talking about Sickness Absence 101. Could you start by telling us the general principles?

Michelle:

Absolutely. So when we're talking about Sickness Absence Management, we are talking about an employer led process and we're talking about managing capability, albeit health capability. In a number of companies you won't actually see a Sickness Absence Management Policy. You will just have either a disciplinary or a capability policy, and the stages are pretty much the same. No matter which policy you're using. The general rule is that you have to undertake a fair and reasonable process when managing any issues you have with your employee. One of the key principles of managing Sickness Absence as a manager is that you have to assume that all absence is genuine unless you have proof to the contrary. So I wouldn't recommend it. But if you have used a private investigator to follow someone around and you can prove that they are not actually genuinely sick, then you can take that down a disciplinary route. But unless you have that proof, you have to assume that every absence is a genuine ill health



absence, Michelle, just going back to that, because you know I love a good crime novel and podcast.

Sarah:

Just going back to the kind of evidence that you would be after, then you can't, it can't just be hearsay. Would it have to be sort of hard evidence, like photographic evidence or you know, would you have to? I know you said you wouldn't suggest someone do it, but if you employed a private investigator would you have to have sort of evidence that then you can present to somebody, like photos, like I don't know. I've read some a few years ago when I used to read newspapers I don't anymore, but I'd read about some people. You know I've been caught out by the benefits system and all that kind of stuff. So it would it have to be. It can't be hearsay, I take it.

Michelle:

Yeah, you do have to have proof rather than you know a mate dot being them in, so to speak. And don't forget that just because someone is off sick from your workplace, if they have a second job or run their own company, that doesn't necessarily mean that they're going to be unable to work in that company as well. So just because they're not at work for you doesn't mean that they are prevented from carrying out work somewhere else. And that's particularly true if you're talking about mental ill health. You know, if there's workplace stress that is causing them to be absent from your workplace, that may not be affecting them in a different workplace, and actually being in that other workplace may help their mental health and enable them to improve and return to your workplace sooner. So, yes, I wouldn't recommend hiring a private investigator unless you have a really solid foundation for believing that an employee is effectively defrauding the company by being off sick. Tribunals don't take kindly to employers abusing that kind of power, but if you feel that's the only way you're going to get evidence that the individual is not genuinely sick, then that is a route you can take, but be very, very cautious with it.

Helen:

Wow, Michelle, that all sounds quite intense. So, moving on from that, what different kinds, I guess, types of sickness, absence are there from an employer's perspective?

Michelle:

So there are two main ones that people will be familiar with, and those are short-term absence and long-term absence. But realistically, there are a couple of others and one that should really sit in every policy around managing sickness absence is managing that short-term absence that has an underlying medical condition. And the other two areas that I want to cover today really are when someone goes off sick in response to a formal case being taken against them, whether that's disciplinary, grievance capability, performance capability case and then the final one would be malingering absence, and we've touched a little bit on that, but I'll go into a bit more detail later.

Helen:

So, before we dive into those, what are the first steps to managing sickness? How should an employer initially deal with an employee's absence?



Michelle:

So the first step to managing sickness absence is actually around the return to work from each individual period of absence, and this is a critical part of the process because it shows the employee that you are engaged with them, that you are interested and need I say it you're actually watching them. So it doesn't have to be anything particularly formal, it doesn't have to be a kind of long drawn-out meeting. I tend to refer to them as return to work discussions rather than meetings or interviews, but it depends what the policy says as to how you refer to it, and it basically is the line manager sitting down with the employee, bringing them back into the workplace, so checking on how they've been, how they're feeling on that particular day, asking whether there's anything that they can do to support the employee, bringing them up to speed with what's been going on in the workplace and just checking to see whether there was a link between this absence and any previous absences. And what you're looking for is there an indication that there might be something bigger that needs to be considered? So, for instance, someone who has a series of headaches, stomach upsets, sort of general kind of absence causes, you might start to think look at, is there an underlying stress issue? Are they feeling overwhelmed at work? Is there something going on outside of work that they're not able to leave at the door? and let's face it, we don't leave our problems at the door. When we walk into work, we bring our whole self, and we should bring our whole self. We are human beings.

But as a manager, it helps you to understand what's going on.

If you are talking to them about what's going on outside of work, you may not be able to directly influence it, but at least they know that you are listening and you're there to help or to just offload on if you need to, and that will go a long way to helping that individual attend work more regularly. So, as you can see, those discussions can be anything from a five-minute catch-up because someone was off yesterday for a single day, or a half hour conversation. If someone's been off for a week or so, one of the key things to come out of a discussion from the manager's perspective needs to be a brief note of the conversation that's taken place and any support that has been agreed to be put in place. These notes are just file notes. They're not there for any particular reason, but if there becomes a pattern of absence that really causes concern, then those notes can be really helpful in identifying whether there is an underlying situation that needs to be addressed, like stress, or whether formal action needs to be taken.

Sarah:

That's really interesting, Michelle. From my experience, certainly from where I've worked in the past, the return-to-work interviews was kind of not a very pleasant experience And I think it heavily, heavily relies on the relationship between you know yourself and your manager. I suppose What can be done if that relationship isn't there and you know, if you've had a period of absence, of sickness or whatever and you just don't have that kind of good relationship, i suppose, with your manager where you feel you can share things if it's an outside issue or, you know, can you go to somebody who you feel more not supported by I suppose that's the wrong word but you have a better connection with who you know, who



you feel more comfortable in sharing, rather than you know reluctantly sharing with somebody you perhaps don't feel that.

Michelle:

Yeah, absolutely, and it's not uncommon for people to not have good experiences of return to work discussions. Quite often they are used by the manager as an opportunity to make them feel guilty for not being there, to really focus in on the why weren't you here, rather than let's get you back into the organization and support you to return to work effectively. If you don't have a great relationship with your line manager, that is always going to be a challenge for you. Opening up in terms of what's going on. You can ask to speak to another manager. Normally that would be a more senior manager, but you could equally ask to speak to someone with HR And particularly when there are personal situations or the illnesses is a more personal nature, that's when we do tend to find that people are asking to speak to a member of an HR team.

Particularly if there's workplace stress or there is something like breast cancer, you may not feel comfortable speaking to your manager. Your manager may be part of that workplace stress. Your manager may be male and you don't feel comfortable with about talking to them about your health condition. So, absolutely, it is appropriate to ask to speak to a member of staff or another manager who you either have a better relationship with, or you feel more comfortable talking about, gender related ill health.

Sarah:

Yeah, just from my own experience actually, that he just reminded me I had an ectopic pregnancy and I had a male manager and I remember going through that and having a period of absence because I had to have surgery And I think I ended up talking to a more senior manager who happened to be female. It just felt to me a more comfortable experience. I think you sometimes you want someone to relate to you know, or to be able to relate to you.

Michelle:

Yes, absolutely, and I think as line managers, we need to be conscious of that. We don't have the right to know intricate detail of our employees health. We don't need to know that to be able to manage effectively. We just need to know at a basic level. Is that anything we can do as managers to make things easier for that employee to attend work on a more regular basis?

Sarah:

So how do you go about managing absence, Michelle?

Michelle:

So I'll take the different types of absence in turn, because each type of absence needs a different approach. So we'll start off with short term absences. Now, a lot of sickness absence management policies will have trigger points in them, So that's something like three periods of absence in three months, five periods of absence in six months. It might be a total number of days, so you know, six days of absence in six months. One of the common ones that I really strongly advise people include is a broad statement that basically says and any other pattern of absence that causes us concern. And that is really, really critical Because that is where you



get the Monday regular absence or the Friday regular absence or the night after a particular football team has lost type of absence.

I've come across them all, so making sure you have those triggers. Another trigger that has sort of gained in popularity and then kind of waned a bit is the Bradford factor, and that's a calculation based on the frequency of absence and the number of days absence. And that gives you an overall score. It's effective, but only if you are calculating the Bradford factor for, effectively, your whole workforce, so that you understand where your high numbers are in comparison to your low numbers. There is not a global standard. If you score above this, you are of concern.

I used it where we did the Bradford factor across the entire organization. And then for each department, we looked at the top 10 scores for that department. And we basically had a conversation with the department head and said, okay, these are the 10 people that we have concerns about. Tell us what you are doing to manage their absence. And if they could say, yes, we've done x, y and z. This is why we haven't taken it further. Fine, if they had a name on that list that they weren't even aware of. That's the case where we need to push the manager to then start to take action. Because they're clearly absent enough to be disruptive to the workforce.

Sarah:

I think with the you said about the Bradford factor, I remember where we used that in an organization I worked for and it's fine if you use it the way you're saying but it was generally used across the board to basically trigger a red or amber or a green or whatever, but there was no nuance to it. So it was being applied slightly wrongly, I think, when it was something that I was using or we were scoring by, because it would often flag people where you know there was nuance to their. You know there was reason and reason that had been discussed to their absence. But the way that you were saying it was being applied, actually to highlight those people that people aren't aware of and to have discussions with department heads who have those return to work discussions. I think it's a much better application than what I've seen in the past.

Michelle:

Yeah, I mean, like any trigger, it is, you know, a sledgehammer to crack a nut. You know it is a blunt tool, it really is. But with all triggers, it is not a trigger to take action it is a trigger to engage in some conversation and to understand what's going on. So, like you say, where there are nuances around the absence that mean it's not appropriate to take further action, then you don't and we've been talking yeah, and we've been talking about it a lot with COVID absence recently.

You know people are still getting COVID now, and when we were in the middle of the pandemic, we quite often disregarded any COVID related absence. It was almost recorded as a different type of absence so it didn't count into the sickness absence figures. We shouldn't be doing that anymore. We should be counting it. We should be using that in terms of identifying whether someone has triggered under the sickness absence policy. But actually the conversation then goes to okay, why has this person triggered? okay, they had a period of



COVID absence. Do we need to take further action? or actually was that a one-off? you know unfortunate timing, etc. Etc. The ones where I would then want to be taking further action would be the ones where there had been a significant level of repeat COVID absences, and it wouldn't necessarily mean that on the first instance I would then take formal action. But I might have a conversation with the individual and I highlight some of the risk factors in their lifestyle that may be contributing to the increased risk of catching COVID and work with them to try and address those so they're not catching it as often. So once you've identified that an employee has triggered and you have looked at the record and decided that you need to meet with that employee. You then have to set a formal meeting, so you need to give them five days notice. They have the right to be accompanied by a trade union rep or workplace colleague and the whole point is that you are sitting down to discuss their absence and to set acceptable standards of attendance. So and the outcome of that meeting is that an improvement plan will be issued.

It is the manager's responsibility to set the target for improvement and who once got asked a question by a manager who I was training at the time and she said well, if we assume that every absence is genuine, how can we ask the employee to reduce their absence level? because if they are genuinely sick, how can you ask them to reduce that? unfortunately, that is part of the manager's job. As an employer, we are not there to pay an individual to not work. The basic relationship between employer and employee Employee works. We pay them for it.

We have a generous sick pay scheme in local government, but that doesn't mean that an employee can take all of that time off sick each year. Line managers have that responsibility of making sure that employees understand that relationship, understand that current levels of absence are not acceptable and that that threatens the ongoing employment relationship if there is no improvement. And we're not saying you have to go from 15 days a year down to nothing. What we're saying is, given your circumstances, what we would like to see is that reduced down to maybe 11 days in a year. So it's not all to nothing, it's a reasonable production in that absence level.

Sarah:

And I suppose we shall with those meetings as well. You know it is a chance as we said earlier is to if there are issues that you feel safe to share. You know it's actually a chance to kind of that kind of duty of care to come in to an employee if they're having issues. You know there's lots of schemes that they can be referred to. There's a lot of organisations who have sort of mental health support or certainly somewhere to direct colleagues to that are struggling. So it is about that. It is about that, like you said, that basic black and white employee-employer relationship where you are paid to do a job and if you're not doing that job then you know you gotta think again. But there's also that kind of duty of care isn't there as well? and and this is a chance to to kind of explore that, i suppose if somebody needs help.

Michelle:

Yeah, and you know the private sector gets a bad rep for being sackum and get them out. But that's not the case. You know. Most employers these days do have, you know, do understand that duty of care and that responsibility to provide a safe, secure working environment for



individuals to thrive in. But yeah, you're absolutely right, those meetings, whilst they are that sort of management process of setting out standards, the other side of that is being able to support your employee to get to those standards and that you know, as you say, referring off to your EAP so that your employee can get access to counselling or debt support, or you know, referrals for health concerns or you know all of that kind of stuff. That's part of the process of these formal meetings.

It's not just a wrap over the knuckles. Do better. It's a things have slipped a bit. Let's work together to get back to where we should be. Here's where we need to be. How can we support you? what can we do to help you get to that point, without overdoing it and kind of saying we'll do everything because the employee has to participate, has to commit to coming into work.

But what we don't want is presenteeism, someone coming in just because they have to and you know pre-covid we would have said, yep, if you're. You know, if you're able to, you get to work. You sit your desk. Covid changed things for us, you know. We now don't want people coming into the office if they're coughing and spluttering everywhere, even if it's not COVID. We don't want people to be passing on illnesses and taking out a larger percentage of our workforce as a result. So it is about can that person work from home while they're not feeling great? you know, and I've done it a number of times, i've got up and I've got. I just can't face the commute, i can't face sitting in the office and having to put on that office face, but I'm not so ill that I can't contribute usefully. You know I can sit with my laptop and respond to a couple of emails or do some research for a web article or plan a podcast. You know all of that kind of stuff comes into it. So actually it's about understanding what's going on with the individual, to be able to support them, to be productive and effectively earn their money.

So where you've put an improvement plan in place, you then have a review period to kind of support that employee to reach those targets, those new targets that you've set for them. Now, in the majority of cases, in that first instance, you're probably looking at a review period of somewhere between three and six months, again with the targets that you're identifying, recognizing that length of review period. So if you're looking at a reduction from 15 days to 11 days over a 12 month period, if you're setting a review period of six months, you're probably looking at a target of somewhere between five and six days absence in that six month review period. And then if they successfully meet those targets in the review period, great, you've got where you need them to be. You just encourage them to maintain that level. If that's still a little bit too high and the team is struggling to maintain that level of absence or support that level of absence, rather, then you can set a new target and try and get them to reduce down a little bit further.

Again, it's not everything to nothing. Rather than five days, try and get them down to four days. But again, it's that supportive conversation with the individual how can we help you improve a bit more. But once that review period is done, if they've met the review, that formal warning is off the file. So anything you do from that point on, is that supportive, engaging conversation rather than part of a formal process? If they don't meet the target? and don't forget, if you've set a target of five days in six months and after three months they've already hit five days, you don't have to wait until the end of the six months. You can



bring them at that point and go right, we've only done three months, you've already had five days.

This is a concern. What else do we need to look at? What else can we do to support you? So if they haven't met the improved standards within the review period, it is back to a formal meeting. At this time it's probably going to be a little bit more rigorous. You're going to really stress the need for them to improve their attendance and look at more ways that you can support them to achieve that. It's quite normal to have two review periods. So they failed the first one. You go to the second meeting. You set a new review period with that improvement plan in place. So the actions you're going to take as the employer and the actions they are going to take as the employee to achieve those improvements At the end of that second review period.

If they still haven't met those improvement targets and there's not a good reason for doing so, then you are looking at moving into a dismissal conversation and therefore you are looking at convening a sickness absence capability hearing which has the potential for dismissal as one of the outcomes.

The next area of sickness absence that I'm going to cover is long-term sickness absence, and this is traditionally defined as absence that it has lasted or is expected to last for at least four weeks.

So, as a manager, if you are aware that your employee is likely to be off or has already been off for that four weeks, your first point is to refer to occupational health. This will give you the medical advice you need to be able to support that employee to return to work effectively, and it's the opportunity for you to understand any reasonable adjustments that need to be put in place to enable that to happen. Once you have that occupational health advice, you move into a case conference meeting and that is really an opportunity for the employee to discuss with you what's going on with their health, with their sort of well-being in general, the occupational health advice that you've received and looking at ways to support that individual to come back into the workplace, whether that's on a phased return, or whether that is some sort of working at home times that they kind of build themselves back up into coming back into the office in your normal hybrid way.

Sarah:

Michelle, who would be present at a sort of case conference? Is that just the manager and employee, or would there be a member of HR present as well?

Michelle:

So that will very much depend on your own setup. I've seen it done in all manner of ways. Sometimes it is just employee and manager, particularly if you're not even anywhere close to a dismissal kind of conversation. For example, let's say someone's been off sick for six weeks because they broke their leg. That's not going to be a particularly contentious conversation. But if we're talking about someone who has been off for a long time maybe workplace stress, maybe an ongoing illness you may end up having a representative from occupational health, a member of the HR team, and the employee themselves may want to bring a trade union rep



or a workplace colleague so that they're not outnumbered and can be provided with support themselves. You're more than likely to have multiple case conferences if people are off for a long period of time. So you may have an initial case conference where it's clear that further medical treatment is required before you know whether that individual is going to be able to return to work or what adjustments will enable that individual to come to work. So if you're talking about six, eight, nine months worth of absence, you may end up having three or four case review or case conference meetings in that time, each with the same purpose of understanding the current situation, what's coming next and how to support that individual to return to work when they are ready to do so. There is obviously a caveat with that, because if they are not ready to return, we do not have an obligation to keep their job open forever. It goes back to that basic premise of the employment contract employee works, we pay them. So if you're getting to that point where it's not looking like that individual is going to return to work, no matter what support you put in place and no matter what's going on with their medical situation, you will get to the point, if they're not able to return, that you have to have turn that case conference into a formal hearing where you discuss the termination of that individual's employment. Now that may be an ill health retirement situation where again occupational health get involved. It may just be a health capability dismissal Again formal meeting at this stage. So absolutely have the statutory right to direct presentation either by a trade union rep or a workplace colleague. There are some exceptions to that if there are particular medical conditions where having a specialist support worker in there would be beneficial to the individual in terms of their representation. That should be a reasonable adjustment. Things where there is a specific disability around communications or mental ill health, where having an advocate who understands the condition more fully would be helpful to the individual.

You don't have to wait until the individual has exhausted all their sick pay before having that conversation. If it's very clear from the medical evidence and the case conferences that that individual is not going to return to work within a reasonable timeframe, you can look to dismiss before they've exhausted their sick pay. The one caveat I would say to that is if you are on Green Book terms and conditions or have copied and pasted Green Book into local terms and conditions, the wording generally creates a contractual entitlement to the complete amount of sick pay. Therefore, if you've got someone who has, you know, six months full and six months half pay entitlement, if you are terminating at nine months, there is a contractual obligation that you would then have to pay the remaining three months of half pay on termination. So it's just something to bear in mind, and that's quite often why in local government we see employers not taking those dismissal decisions until sick pay has been exhausted.

The next category of sickness absence that I'm going to turn to is that short-term absence with an underlying medical condition, and this is where you get those intermittent periods of absence that just look like normal short-term sickness absence, but actually there is an underlying condition sitting underneath it and that may be a disability, it may just be, you know, an underlying stress factor or something like that. We quite often see this where someone has asthma and certain conditions trigger the asthma. They may attend work on a fairly regular basis, but once in a while they have an attack and they are not able to attend work. So ultimately, because we're talking short-term absence but with a medical condition,



it's really a hybrid approach between the approach that you take for short-term absence and the approach you take for long-term absence. So the triggers will still apply, but because there's an underlying health condition there, you'll also need to get the occupational health input. You'll also need to consider reasonable adjustments and you know, looking at the occupational health advice, that you're getting around managing that particular health condition. So, taking an employee with asthma, for example, occupational health might advise that, due to the severity of their asthma, you could reasonably expect around eight days a year of absence from that individual specifically linked to asthma. So you have two choices you either set two sets of triggers, so you have a set of triggers that says non asthma related absence standard trigger. That sits in the policy. And then you have a second trigger that if the person has more than eight days in 12 months with asthma related absence, then that's a separate trigger.

The alternative way is to just adjust the triggers that are laid out in policy with the asthma related absence. So if you had, for example, a five absences in six months trigger, occupational health have said you can expect eight days a year that's asthma related. That's four days in a six month period. So you'd add that on to the the five day trigger period from the policy. So ultimately, if that individual is having more than nine days off in a six month period, then they would trigger.

But again, you have to be careful because in the winter months you might have an individual who triggers more frequently, equally heavy for season. That might trigger them more. So adding it in isn't always the easiest way. Sometimes it is actually easier to keep them separate so that you're monitoring the different types of absence you know, so that when there are seasonal fluctuations you're not triggering someone just because they've had six days of asthma related absence in that period that you're looking at. So again, as this is a hybrid of the two different approaches. You will be having sort of case conference meetings and, if people are triggering, you'll be having those formal meetings setting improvement targets, setting out that improvement plan, understanding what support is necessary from the employer's perspective, getting the employee to understand what they need to do to improve their attendance, setting that review period and if they're not able to maintain an appropriate level of attendance that you know the team can cope with, then ultimately you would move to dismissal in the same way that you would with short-term absence.

Sarah:

Michelle, with underlying health conditions then, because a lot of people don't use application forms anymore and there's a lot of questions that you can't ask legally Is it necessary for an employee to declare underlying health issues? So you've talked about asthma. I have asthma, but I don't remember declaring that when I joined SEE. Is it something people have to declare? Is it something that it becomes apparent when and if they do have absences due to an underlying health condition?

Michelle:

I mean, while application processes are shifting, it's still not unreasonable to ask someone to fill out an occupational health questionnaire and get that reviewed by an occupational health professional before they start working for you. But if you're not going down that line, you



know, again asking the employee, potential employee, direct as part of that on-boarding process, is there anything that we need to be aware of that will enable us to provide the right level of support to you to enable you to work effectively with us? And I've used that approach and it's been very open and honest. But again, not all managers are that approachable, not all managers are, you know, going to have that kind of rapport with a new recruit that early on.

The way the law looks at it is particularly around disability. Does the employer know about it or should an employer reasonably be aware of that disability? So, while there isn't necessarily a, they have declared, if there is sufficient evidence to suggest to the employer that there is a cause for concern, it's the employer's responsibility ultimately to follow up on that and understand whether there is an actual issue. If there is a disability present and the employer could reasonably have known about it, they will be treated as having known about it. And this is one of the real catch 22 positions that employers find themselves in, particularly when they have occupational health pre-employment health checks. A person might declare a disability on that form. Occupational health will look at that, go well, that doesn't prevent them from doing their job. We don't really think there's anything that at this stage the employer needs to do in terms of reasonable adjustment. So they don't say anything to the employer And so the line managers, completely unaware that there is a potential disability that they need to manage at some point.

0:38:27- Sarah

And you know, in this kind of I was going to say this day and age, but that sounds really old-fashioned. But now we're talking a lot more about mental health and neurodivergence and all that kind of stuff And it's you know there's still stigma attached to some things. There shouldn't be but there is. So I suppose it's about whether you feel safe as a potential employee if you're having to do a pre-employment check to actually declare that stuff Because you know you don't want to be, you don't want to potentially lose that job based on you declaring something that you think people, you know that somebody might not like. But I suppose there's all those legalities as well.

Michelle:

Yeah, and this is where occupational health comes into its own, because as a medical profession, they have the same duties and obligations around confidentiality than you know, an NHS doctor in your local hospital, which is why there's this almost wall that goes up between the, you know the your occupational health provider and your organization, which. The problem with that is that actually, if the OH provider knows, it's deemed that the employer is aware. On the other side of it, if an employer is looking to withdraw an offer of employment based on the medical information that has been provided, that's a very dangerous situation to put yourselves in as an employer. That could potentially land you with a tribunal claim for discrimination on the grounds of disability, because just because they're not actually employed with you at the time, you still aren't allowed to discriminate against them in that recruitment process.

Sarah:

So in terms of the OH stuff, then the occupational health, I don't know if it's me being completely naive, but I certainly don't ever remember kind of seeing that it was completely



confidential And I wonder if that's kind of an internal comms thing as well. I wonder if this is something councils need to be looking at to sort of allow their employees to understand that kind of support, that kind of confidentiality. And you know it's terrible. I'm only just learning this today and I've worked for I don't know 20 years without giving away my age. So I wonder if there's, you know, certainly if there, you know there's obviously policies about this stuff. But I wonder if councils and organizations are doing enough to enlighten their employees about, you know, if they're taking a lot of sickness or they've got an underlying health condition, that there is actually support there, not just from managers but also from, you know, third parties like occupational health organizations.

Michelle:

Yeah, I would agree with you Most employees when you say I need to refer you to occupational health, kind of go into that. Oh my God, oh my God, oh my God, they're going to sack me.

And they see it as a. You know they're being beaten by a stick, effectively, and I, when I worked at a council, tried really hard to turn that around, because occupational health isn't a stick. It's actually that's, as you say, that support mechanism. It's about enabling the managers to understand a bit more about the medical condition or the support that individual needs to enable them to engage more fully in the workplace. It takes a lot to sort of shift that culture away from a punishment to a support mechanism, but it is a critical part And in terms of the confidentiality of occupational health, they are covered by the medical records legislation.

So any report they write, you as the employee have the right to see that report before it gets sent to your employer. You also then have the right to say I don't want that sent to my employer. Now, that in itself comes with its own risks, because if you're not releasing the report to the employer, the employer has to make a decision on the basis of the information that they know, and that information is you're not able to attend work on a regular basis, which is disruptive to the organization and impact on productivity. So if you're not releasing that occupational health report to your employer, then it ultimately increases the risk for you because they're not operating with a full picture.

Sarah:

And that's understandable, because we've already spoken about that that, black and white, you are employed, you know to do a job, and if you're not able to do that job, then how can you be paid and employed for that role? So, yeah, I think you know we'll keep coming back to that today.

Michelle:

So those are probably the three areas of absence that most people are used to dealing with. The next couple of areas I've mentioned will be a lot quicker. There's not quite so much to be said about them, although the next one in itself creates no end of hassle, and the number of HR teams who are having to deal with this is phenomenal and that is when someone goes off sick in response to a formal case being brought against them. Now we've all seen it An employee's advised that they're about to be party to a disciplinary investigation, or their



manager is saying that they are not performing to the required standard for the role And therefore a capability procedure is about to start. The employee's reaction is to go off sick, don't want to deal with it, can't deal with it, i'm not going to go to work. So they phone in and then they get signed off by the GP with stress because they can't face going to work because they have this pending case against them. Now the first point is that this is quite a normal reaction. Everybody has to deal with this kind of case, But ultimately you, as an employer, still have an obligation to undertake a reasonable process for that case And to do that in a timely way.

So to engage the individual in that case, you need to get an occupational health opinion on whether they are fit to participate in the process and on what basis are they fit to participate? So can you interview them face to face? Where's an appropriate venue for that interview to take place? Can they come into the office to do it? Do they need to go to another workplace location? So if you are a multi-sited organization, could they go to a different office? I wouldn't recommend a coffee shop. That's a bit too public. But could you rent a room in a hotel near the individual's home? Or are you likely to need to go to that individual's house to conduct the interview? That in itself has its own risks and I would recommend avoiding that as much as possible. Does it need a different investigator? Is the person who has been set as the investigator part of the issue? If the person can't participate in a face-to-face interview, could it be done by phone? Can it be done in writing? So the investigator compiles a list of questions, sends those over to the individual, or the individual crosses their responses and returns them, and that forms the basis of their interview If the investigator needs to follow up. It's another series of questions that get sent across and responses returned. So there are lots of different ways of engaging with an individual to help them participate in the process. In the majority of cases, occupational health will come back and say, yes, they are fit to return. In the majority of cases, occupational health will come back and say, yes, they are fit to participate. On these grounds, and it will generally be followed up with a statement that indicates that part of the reason they are absent is the case and by resolving the case it will alleviate some of that stress. So, generally speaking, occupational health will be on the side of getting the case dealt with. So it will only be really extreme cases where they say no, you can't proceed with the investigation at the moment, and that's going to be in the cases of really severe mental ill health where the individual is incredibly vulnerable and high risk.

The final area of sitting in substance I'm going to talk to at the moment is malingering, and this is generally seen as the employee who could be at work should be at work but, for whatever reason, has chosen not to be at work and call in sick instead. There are actual medical assessments that can be undertaken by experts to identify whether someone is malingering. So they're claiming a particular medical condition but there's a suspicion that that's not actually what's going on. There are actual tests that the medical professionals can undertake. Your occupational health provider probably isn't able to want to take it, but they would be able to refer to the people who can and they can identify whether that individual actually has that medical condition or is just trying it on a little bit.

Ultimately, malingering is defrauding the company. It is accepting pay when they are not entitled to it, whether that is sick pay or normal pay. They are taking pay when they are not entitled to it and that is fraud. So you are perfectly entitled, once you have the medical



evidence, to go down a disciplinary route, probably for gross misconduct, with a dismissal at the end of that process. The other route to take is a breacher contract, certainly in local government, with the Green Book terms and conditions around sickness absence. There are some carefully worded clauses that enable employers to manage that malingering type behaviour and withhold sick pay and move to dismissal. So any dismissal for malingering would be probably a combination of breacher contract and gross misconduct.

Helen:

So one of the questions we get asked is how to manage someone who has a drug or alcohol addiction. Can you tell us a little bit about that, Michelle?

Michelle:

Absolutely So. drug and alcohol addiction is viewed as a medical condition under our sickness policies. generally speaking It is very much handled in that supportive manner that tries to engage the employee in getting off those substances. So as long as the employee is engaging with a detox program or an alcohol addiction program or a drug addiction program they have gone into rehab or they are accepting that rehabilitation process, we treat that as a medical condition And we provide the support. probably that short-term absence with an underlying medical condition type process is most appropriate. But if that person is refusing to acknowledge that they have an addiction, they are refusing to engage in any rehabilitation program to remove that addiction, then you go straight into that short-term absence process and you move to dismissal because you don't have the accepted medical condition sitting underneath it and that employee isn't engaging in any activity to help them.

Sarah:

And I suppose, again, it goes back to that they are not fit to do their job, for which they are paid, you know, and it is that kind of black and white rule.

Michelle:

Absolutely Particularly if there's a safety critical element to their job. and again, you know we'll come across this. You know someone who's using heavy machinery or is required to drive as part of their role. You cannot have them operating either a vehicle or machinery under the influence of any substance. You know they're not only a danger to themselves but they're a danger to the public. So you know, the insurance risk in itself is a reason to try and address those concerns. But actually we all know the damage that any kind of addiction can do to someone. And again, you know, as responsible and engaged employers who are concerned about the well-being of our workforce, we would really try, want to try and do as much as possible to remove that risk for the employee.

Helen:

Thank you, Michelle, for sharing your insights on Sickness Absence 101. And if you do have any questions for Michelle regarding Sickness Absence or any other HR queries and you are a member of SEE, please contact her on advice@seemp.co.uk, And we have a whole host of information, resources and various details about the services SEE offers available on our



website at www.seemp.co.uk. Thank you for joining us. As I said, the HR edit will be available on the SEE website at www.seemp.co.uk/thehredit on Apple Podcasts or wherever you get your podcasts. And we hope to have you back for our next episode. Thank you very much and we'll see you then.

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