

# Employment Law Do's & Don'ts

## Sickness Absence

### DO

- Do be sympathetic. We're all human and unfortunately can't help getting sick from time to time – providing support and understanding to employees is the first step in preventing long-term absence.
- Do find out whether there's more to the story of an employee's ongoing sickness absence (e.g. a disability, or bullying at work). There could be an underlying issue you could help with, enabling them back to work sooner.
- Do have a clear, written, absence reporting procedure in place. It will make it much more difficult to manage an absent employee without this.
- Do ensure your policy covers sickness whilst on holiday. This is a complex area of law, but an employee can be entitled to claim back holiday if they become sick, employees continue to accrue holiday when off work sick (which can be rolled to subsequent holiday years) and employees are entitled to take (and be paid in respect of) holiday while they are off sick.
- Do keep accurate sickness absence records but disregard any absences relating to pregnancy (and potentially disability) when it comes to things like redundancy selection exercises.
- Do keep in touch with employees on long-term sickness, but make sure you strike the right balance between keeping them in the loop and not harassing them.

### DON'T

- Don't underestimate the value of an occupational health assessment. GPs, and most consultants, are not occupational experts and will not usually be able to give you a detailed opinion about your employee's suitability to carry out their role, or return to work plans.
- Don't rely unreservedly on sickness tools like the Bradford Factor. They can be helpful indicators, but relying on them fully could lead to indirect discrimination claims when you consider conditions like Chronic Fatigue Syndrome/ME.
- Don't forget that all employees are entitled to Statutory Sick Pay (SSP) after the first three days (including non-working days) of sickness. You don't have to pay full salary, but you do have to pay the going SSP rate which, as at April 2019, is £94.25 per week.
- Don't expect the onus to be on a disabled employee to tell you what adjustments you should make. By all means ask an employee what support they need, but a Tribunal will also expect an employer to seek additional help (see the first "don't" about occupational health advisers).
- Don't assume the worst. Just because an employee is spotted in town when they are "supposed" to be off sick, this doesn't necessarily mean they are malingering – they could have been visiting the doctor, pharmacy or perhaps even doing medically advised exercise.