

Employment Law - Medical Certificates

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Employment Law Background

Common questions which often arise for employers are:

- can an employer insist that an employee produce a medical certificate as proof of injury or illness?
- can an employer insist on this if it is in a company policy or a requirement in an employment contract?
- can an employee provide evidence other than a medical certificate?

In respect of the Fair Work Act:

- an employer may require an employee to provide evidence "that would satisfy a reasonable person" that the employee was entitled to take personal/carer's leave
- the usual evidence is either a medical certificate or a statutory declaration
- in saying this, the Fair Work Act does not refer to a 'medical practitioner', 'medical certificate' or a 'registered health practitioner' in relation to personal/carer's leave
- under s12 of the Fair Work Act, a medical certificate must be produced only in relation to unpaid maternity leave pursuant to the National Employment Standards (specifically related to 'paid no safe job leave', 'special maternity leave' and 'transfer to safe job')

In respect of modern awards:

- most modern awards do not specify the type of evidence to be provided by an employee
- modern awards need to comply with the requirements of the Fair Work Act

In respect of a company policy and an employment contract:

- whilst they can suggest forms of evidence they cannot state that the only evidence that can be provided is a medical certificate or statutory declaration
- they are subject to the provisions of the applicable modern award (or enterprise agreement) and the Fair Work Act

By way of general guidance:

- for single-day absences, requesting a statutory declaration is usually reasonable
- for distinct patterns of repeated single-day absences, absences before or after public holidays or weekends, or absences of three days or more, requesting a medical certificate



is usually reasonable

- depending upon the condition which prevented the employee from attending the workplace, employers may be able to refuse to accept a certificate from a registered health practitioner (other than a general practitioner) such as dentists and physiotherapists, however, this refusal should be exercised with a high level of caution
- Pharmacy Guild of Australia current guidelines indicate pharmacists may issue certificates but they are limited to the supply, compounding or dispensing of medicines AND the provision of professional pharmacy services, including advice on minor conditions and the effective and safe use of medicines AND circumstances where they can reasonably form a view as to an employee's fitness for work or, as relevant, to the illness or injury of the relevant member of the household or the immediate family

Workplace Law Tips for Employers

Our **Matthews Folbigg Workplace Solutions** employment law team recommends employers:

- seek the assistance of an employment lawyer to understand the impacts of these employment law requirements
- ensure employment law policies comply with the Fair Work Act and relevant modern awards and enterprise agreements
- ensure employment contracts comply with the Fair Work Act and relevant modern awards and enterprise agreements
- review employment contracts and employment law policies at least once every 12 months to ensure they remain current with workplace practices and all relevant employment laws

More Information

For further information regarding any matter to do with workplace law, please call the leading employment lawyers in Parramatta, the **Matthews Folbigg Workplace Solutions** employment law team on 9635-7966 to speak with one of our employment lawyers.