

LABOUR NEWS

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Winter Workplace Wisdom: Sick Notes Under Scrutiny

**SOUND ADVICE &
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"Sick Notes or Sick Excuses?" – What Every Employer Needs to Know

Understanding Sick Notes & Sick Leave Abuse

1. Abuse of Sick Leave:

Sick leave abuse may be suspected when patterns emerge, such as:

- ✓ Taking sick leave consistently before or after public holidays
- ✓ Taking sick leave before or after weekends
- ✓ Regular extended sick leave without a clear medical basis

If a pattern is identified, it can form the basis for disciplinary action, up to and including termination, provided the company follows fair procedure:

- ✓ Document the trend with dates and medical certificates.
- ✓ Conduct an investigation and provide the employee with an opportunity to respond.
- ✓ Issue warnings if necessary.
- ✓ In excessive or repeated abuse cases, termination can be considered.

Note: Medical certificates must comply with the **Basic Conditions of Employment Act (BCEA)** – they must come from a **registered medical practitioner**. We have seen instances where even legitimate doctors were stopped from issuing sick notes inappropriately. If there is any doubt, managers are encouraged to forward the certificate to HR for verification.

A practitioner may only issue a certificate of illness if it includes:

- ✓ The practitioner's full details (name, qualifications, and contact information)
- ✓ The patient's full details
- ✓ The date and time of the medical examination
- ✓ The reason or basis for issuing the certificate
- ✓ A brief description of the illness (only if the patient gives consent)
- ✓ A statement on whether the patient is fit or unfit for duty
- ✓ The recommended period of sick leave
- ✓ The practitioner's clear identification, including an original signature

If patterns of absenteeism emerge, employers are within their rights to investigate further. This does not mean assuming the worst, but it does mean being proactive in maintaining fairness and operational efficiency.

When Does Sick Leave Turn Into Medical Incapacity?

When an employee is consistently unable to fulfil their duties due to illness, you may need to consider an incapacity hearing. This is not a disciplinary hearing, it is a process to determine whether the employee can continue in their role, or if adjustments are needed.



It is essential to:

- ✓ Give the employee an opportunity to provide medical information.
- ✓ Consider reasonable accommodations.
- ✓ Explore alternative positions before considering termination.

Remember, this is a last resort and must be procedurally fair and substantively justified.

Medical Disclosure: What Are the Rules?

Employees are not legally required to disclose medical conditions unless:

- ✓ Their condition affects their ability to perform their job.
- ✓ There is a potential health and safety risk to the employee or others in the workplace.

A doctor is not obligated to disclose the specific diagnosis. Instead, the medical certificate or report should indicate:

- ✓ Whether the condition is temporary or permanent
- ✓ If temporary, the expected duration of the condition
- ✓ Whether the employee is fit to perform their duties
- ✓ Whether any accommodations may be necessary

All medical information must be handled with strict confidentiality in accordance with the Labour Relations Act (LRA) and the Protection of Personal Information Act (POPIA). While a non-disclosure agreement (NDA) is generally not required for processing employee health information, employers are legally and ethically obligated to ensure that such data is securely stored and only accessed by individuals who have a legitimate need to know.

2. Sick Leave Entitlement:

Under the **BCEA**, employees are entitled to:

- ✓ One day of paid sick leave for every 26 days worked in the first 6 months of employment.
- ✓ After 6 months, full sick leave entitlement applies:
 - 5-day employee: 30 days in a 3-year cycle
 - 6-day employee: 36 days in a 3-year cycle

Myth-buster: Many incorrectly believe employees are entitled to only 10 days per year. This is not true, the entitlement is calculated over a 3-year cycle and may be taken all in one year if needed.





3. When Sick Leave is Depleted:

If the employee has used up their statutory sick leave, the following options apply:

- ✓ **Unpaid leave:** This is the default position unless otherwise agreed.
- ✓ **Annual leave:** By agreement, annual leave may be used to cover additional sick leave. This is often practical since any accrued annual leave would be paid out on termination anyway.

Scenario: Employee is hospitalised for 2 months and has exhausted their sick leave.

- ✓ HR and employee may agree to use any available annual leave.
- ✓ Once that is exhausted, any further absence will be treated as unpaid leave.

4. How Much Unpaid Leave Can Be Granted?

Unpaid Leave Summary: Key Guidelines and Best Practices Legal Framework & General Approach

Unpaid leave is not strictly regulated by South African labour law, and there is no statutory maximum. Employers should grant it reasonably, balancing operational needs with employee wellbeing. It is advisable for the employer and employee to reach **consensus on the maximum amount of unpaid leave** that may be granted. Note that unpaid leave should **only be considered in exceptional circumstances** and not as a standard practice.

Key Considerations

- ✓ Nature and duration of the illness
- ✓ Operational impact
- ✓ Employee's service length and attendance history

Common HR Practice

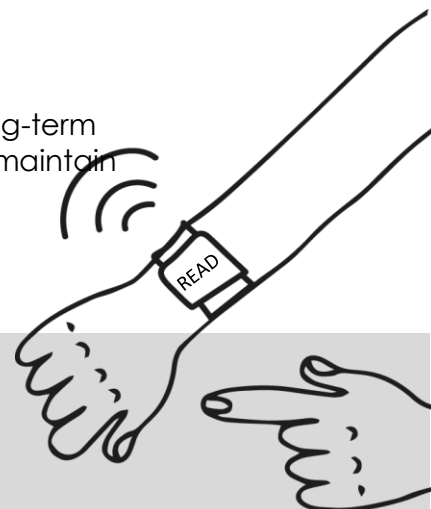
- ✓ Typical limits range from 1 to 3 months
- ✓ Up to 6 months in exceptional cases, with medical updates and formal agreements

Temporary Incapacity & Extended Leave

- ✓ Prolonged unpaid leave due to illness may be treated as temporary incapacity
- ✓ Employers should explore accommodations and use occupational health assessments

Dismissal for Incapacity

- ✓ May be considered if the employee remains unfit for work long-term
- ✓ Must follow fair procedures, attempt accommodations, and maintain communication



Recommendations

We recommend that employers establish clear internal guidelines for managing unpaid leave. These should outline reasonable duration limits, a transparent approval and documentation process, regular review intervals, and clear communication expectations with employees. If an employee exceeds the agreed leave period, consider initiating an incapacity process in line with labour legislation.

For complex or sensitive cases, it is advisable to consult legal or medical professionals. Ensuring fair and consistent application of these guidelines will help reduce the risk of disputes and promote good workplace relations.

5. UIF (Unemployment Insurance Fund) Claims During Sick Leave:

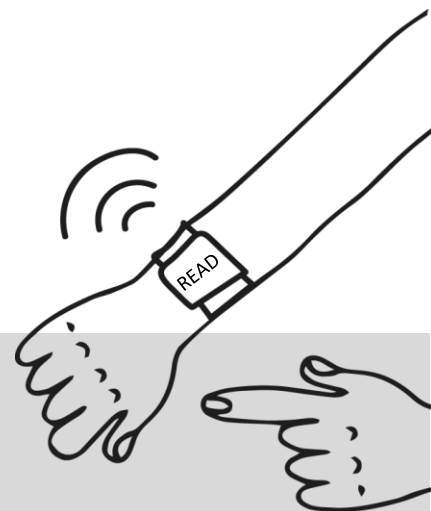
Yes, an employee can claim from UIF if they are on extended sick leave and unpaid, provided the following conditions are met:

- ✓ The illness lasts for more than 7 days
- ✓ They are unable to work due to medical reasons
- ✓ They have a valid medical certificate
- ✓ They are not receiving full pay during this period

Important: Claims must be submitted within **6 months** of the illness.

Summary Cheat Sheet:

ITEM	DETAILS
Pattern of sick leave	Before/after weekends or public holidays → Investigate → Discipline possible
Sick leave entitlement	30 days/36 days in 3-year cycle (after 6 months)
Exhausted sick leave	Use annual leave (by agreement) → then unpaid leave
Maximum unpaid leave	No legal max; consider case-by-case with HR
UIF eligibility	Yes, if illness >7 days and employee is unpaid or partially paid



**Did
you
know?**

Up to 25% of workplace absenteeism is linked to preventable chronic conditions such as hypertension and diabetes, many of which go undetected or unmanaged due to insufficient health screenings in the workplace.

— World Economic Forum

Why It Matters:

Chronic conditions like hypertension and diabetes often go unnoticed without regular health checks, leading to sudden illness and increased absenteeism. This impacts productivity and raises healthcare costs for employers. Early detection through workplace wellness programs and screenings can improve employee health and reduce preventable sick leave.

CONCLUDING INSIGHTS:

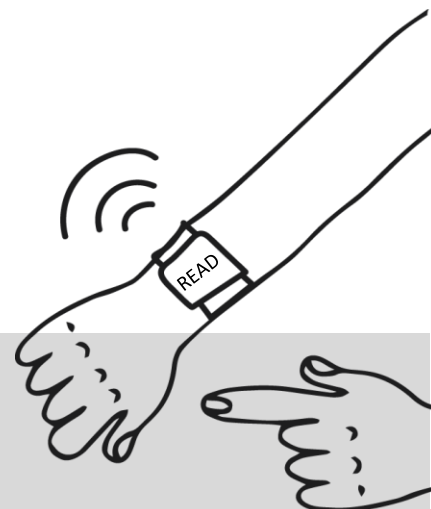
Striking the right balance in managing sick leave is essential for a healthy, productive, and legally compliant workplace. By implementing clear policies, requiring valid documentation, and equipping managers with the right training, organisations can prevent abuse while supporting employees with fairness and compassion. Treating sick leave as a fundamental right, not a privilege, promotes trust, boosts morale, and protects both employee wellbeing and operational efficiency. A thoughtful, consistent approach ensures a resilient workforce, and a positive workplace culture grounded in empathy and accountability.



CALL TO ACTION:

Review your sick leave and medical incapacity policies today.

- ✓ Need help drafting or reviewing policies?
- ✓ Contact us for guidance and support tailored to your business.



FUN FACT:

Studies show that workplaces that encourage employees to take their full lunch breaks often report higher levels of job satisfaction and mental clarity among staff. A true break can lead to a more refreshed and engaged team!



Sincerely yours!
Yanka Engelbrecht

Contact us today to learn how we can assist your organisation in creating a harmonious and productive work environment.

Do you know about our new Facebook and LinkedIn Business pages we just launched for Contact Labour. This is where we will be sharing our best tips to help with any Labour Relations problems or queries you might have. We would really appreciate it if you like our new pages and if you do, you will get our best content first.

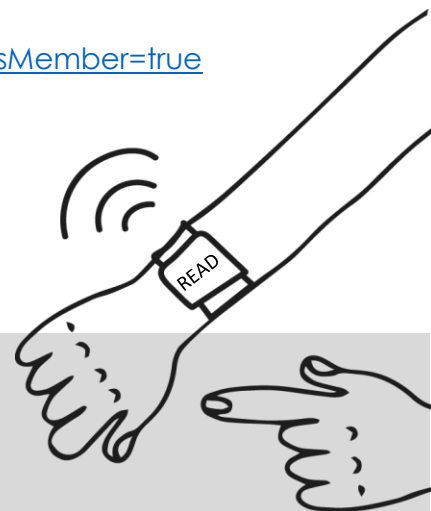
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