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ABSENCE PROTOCOL
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SICK AND WHAT NOW

PROTOCOL 2020

Introduction

Anyone who is sick wants to get well as soon as possible. But when an employee gets sick, not only he but also his employer has an interest in making a speedy recovery. This makes sense, because employees were hired to do the work that goes with their job. If they do not perform their duties, it may mean that machinery in a factory stops, a truck does not run or a school class is not t a u g h t . And that, in turn, can affect the survival of the o r g a n i z a t i o n : without production or service no sales, without sales no profits, without profits a company ceases to exist. Then employees lose their jobs and probably much of their income.

According to the Sickness Law, it is not so much a question of being sick, but of being unfit for work for one's job due to illness or disability. Whether there is legal incapacity for work can only be determined by a company doctor. To avoid misunderstandings, let us continue to speak of illness. In some cases, it is not justified when an employee calls in sick, such as when there is a labor dispute or a sick child that needs to be cared for. These are times when leave might be taken. But even if an employee is sick but not unfit to do their job, there is no reason to call in sick. Consider, for example, an accountant with a broken ankle in a cast: he can probably do his work sitting down.

In the Netherlands, an employer is required to continue paying his employee's wages for two years during illness. How much, that depends on agreements made, but in most cases somewhere between 70 and 100% of those wages. Thus, the employer must also pay the wages of an employee who is temporarily unproductive:

so no turnover and no profit, but also labor costs. Or the cost of temporarily hiring a replacement, so there is turnover and hopefully profit. Quick recovery and early reintegration, that is the task for employer and employee.

So we can say that there is a relationship between employee health and the profitability of an organization. This in turn means, that employees and employers have the same interest: the survival of the organization, through the commitment of the people who work there. And thus preservation of job and income. That is why it is important to make sound agreements regarding those moments that jeopardize the continued existence, such as employee illness. These agreements are laid down in this protocol.

Both the employer and his employees have duties and rights. The Wet Verbetering Poortwachter is a law that describes what and when employer and employee must do something, in the context of absenteeism and reintegration.

Reporting sick

In case of illness, the employee himself must report to his immediate supervisor by telephone as soon as possible on the first day of illness, but in any case before the start of his working hours. In those cases where the employee is unable to report himself, he may have someone else do so. If an employee becomes ill during working hours, he shall personally report to his immediate supervisor.

When reporting, the employee states:

- ▶ What the likely duration of the absence will be;
- ▶ Whether scheduled appointments should be canceled in that regard;
- ▶ What the employer can do to help;
- ▶ At what (nursing) address and phone number the employee can be reached;
- ▶ What work can still be done;
- ▶ Whether there is incapacity for work due to an accident for which a third party is liable;
- ▶ Whether there is a "safety net" situation. Safety net situation means, for example, incapacity for work due to pregnancy or due to structural functional limitations (formerly incapacitated).

The employee is not required to make any statements regarding the nature or cause of the illness, but may do so voluntarily. Based on the information provided, the supervisor will notify the responsible case manager. The case manager will contact the employee the same day, unless in all fairness and reasonableness it is not useful or possible.

If there is any doubt regarding illness, the report will not be accepted outright. To be on the safe side, the employer may ask the company doctor to give a ruling on whether or not there is illness.

Short-term absenteeism

Visiting (dental) doctors or specialists is in principle done in your own time. If this is demonstrably not possible, you should contact your consultant. The consultant will assess whether special leave with pay is possible.

Company doctor

The company doctor is the only one who can answer the question of whether an employee is sick according to the Sickness Benefits Act and whether or not he is capable of performing his own job. For that reason, the company doctor will be called in if clarity needs to be provided regarding that question, but also if there is (imminent) long-term absenteeism. Pursuant to the Wet Verbetering Poortwachter, the company doctor is called in at predetermined moments in connection with the guidance of sick employees.

Pursuant to legal provisions, employees must at all times comply with a call to appear at the company doctor's consultation. If there is a valid reason to cancel the appointment with the company doctor, the employee should inform his or her supervisor. If the supervisor believes that the reason is indeed valid, only he is authorized to cancel the appointment. In case of late or unjustified cancellation, costs may be charged.

The company doctor will report his findings to the employer in compliance with the Personal Data Protection Act (privacy law): no medical information will be exchanged with the employer. However, the company doctor will indicate whether there is indeed illness, whether the employee is receiving adequate treatment, whether there are possibilities for work and what the prognosis is regarding recovery and return to work.

Even if there is no absence (yet), employees have the opportunity to see the company doctor. This is then called a working conditions consultation called an occupational health and safety consultation. Employees can make an appointment with the company doctor without the intervention of the manager. The company doctor will not report back to the employer about this appointment.

Contact with supervisor/employer

Employee and supervisor have been in contact on the first day of illness. Thereafter, they will naturally maintain regular contact during the period of illness to discuss the state of affairs, for the first time no later than the third day. After the first contact, the employee may be requested to be available by telephone during the first 2 weeks before 10 a.m. and between 12 p.m. and 2:30 p.m. Thereafter, there will be contact between employee and supervisor at least once a week and they will have contact with each other at the established times in the context of the reintegration obligations.

Gatekeeper Improvement Act

The first moment within the Wet Verbetering Poortwachter is the appointment with the company doctor for the preparation of the problem analysis and the corresponding work resumption advice. That appointment takes place in the fifth or sixth week after the first day of illness.

Then, based on the problem analysis, an action plan must be drawn up, no later than the eighth week. This action plan is drawn up by the employee and his or her superior together and they both sign it. The plan of approach explicitly describes the steps that will be taken to achieve recovery and return to work and the time schedule for doing so: steps to be taken by the employee and by the employer. The joint signing of the action plan means that there is agreement about the steps to be taken and the pace at which they are to be taken. In principle, once every six weeks there will be a follow-up meeting between employee and company doctor.

If the findings of the company doctor give cause to adjust the plan of approach, an adjustment of the plan of approach will be drawn up by employee and supervisor. That adjustment must again be signed by employee and supervisor.

If there is still illness after 42 weeks, the employer will report it to the Executive Institute

Employee Insurance Administration (UWV) report. After 52 weeks of illness, a so-called first-year evaluation should be drawn up by the employee and the supervisor. That evaluation results in the opinions of employee and supervisor regarding what has been achieved in the past year.

The notification in week 42 is important in case the illness will also last longer than a year and a half. After about 88 weeks, the employee is notified by the UWV that action needs to be taken in order to eventually apply for WIA benefits. The first step that must then be taken is to draw up the final evaluation in week 91: as with the first-year evaluation, this is a time to look back together at what has been done since the first day of illness to come back to work and what the current state of affairs is.

The employee should then receive from the company doctor the Current Judgment and Medical Information to complete the Reintegration Report. By week 93 at the latest, the employee should then have submitted the WIA application, accompanied by the Reintegration Report. In view of the complexity of the matter and the great importance of a correct application, the case manager will support the employee in this if required.

Other legal provisions

In a general sense, an employee is obliged to fully commit to recovery and reintegration. This includes visiting the company doctor or cooperating in requesting necessary medical information from a practitioner, for example. An employee may not hinder or delay his healing and recovery. Nor may an employee refuse suitable work offered to him by the employer. The employee is also obliged to cooperate in the preparation of the plan of action. If an employee disagrees with his employer or the company doctor, there is a possibility to ask the UWV for its opinion. That possibility is called an expert opinion. The UWV will take a position and inform the employee and employer accordingly.

The employer has the option of imposing a wage penalty on the employee if, in the employer's opinion, the employee makes insufficient reintegration efforts: wage suspension or wage freeze. In this context, the employer is not obliged to continue **p a y i n g** the employee's wages pending the expert opinion. If the UWV shares the employee's opinion, the employer will still pay the wages retroactively. If the UWV rules against the employee, the employee must still follow the instructions of the employer within the framework of reintegration. Continued refusal to cooperate may result in termination of employment.

Frequent and long-term absenteeism

Being sick is not a disgrace and it can happen to anyone. In fact, on average, every employee is absent once a year. Worryingly frequent absence is said to occur when there are more than two absences due to illness, within a 12-month period.

Equally troubling is when there is long-term absenteeism. This is the case when an employee's individual absenteeism rate deviates more than 3% from the industry average.

The reason for the concern has everything to do with the knowledge that people who are frequently and/or frequently absent from work will, with a high degree of c e r t a i n t y , be absent from work for a very long time due to illness in the not too distant future. For this reason, the early detection of frequent and long-term absenteeism has a preventive character toward the f u t u r e . The manager and the case manager will enter into discussion with the employee to see if there is a structural absenteeism problem that can and should be addressed.

Vacation and Abroad

When a sick employee wants to go on vacation, he needs permission from his supervisor. The latter may rely on the advice of the company doctor.

The same rules apply for reporting sick from abroad as for reporting sick from the Netherlands: report to the manager as soon as possible. In addition, a local general practitioner must be called in as soon as possible for a medical certificate. This statement must be in English and contain the following information:

- ▶ the nature of the disease;
- ▶ the course of the disease;
- 🌀 the therapy instituted;
- ▶ A statement of medical unfitness to travel (if applicable).

After returning home, the employee must submit these medical records to the company doctor. This is necessary to determine the right to continued wage payment. In the Netherlands, we have agreed that only a company doctor may determine whether an employee is unfit for work.

If a sick employee wants his reintegration and recovery to take place abroad, even then this is only possible with the express permission of his supervisor and the company doctor. Subsequently, the Wet Verbetering Poortwachter will also apply and the employee must report with some regularity to a (company) doctor in the country where he is staying or to the company doctor in the Netherlands.

The goal of employee and employer is to achieve rapid recovery and early reintegration.

Recovery occurs when an employee is able to perform his own job to the fullest **e x t e n t**. Just like reporting sick, the recovery report should be made to the supervisor. The latter will take follow-up action. If there is no doubt about the alleged recovery, in principle, the employee will resume his own work at the direction of the manager.

If the employee's recovery and abilities do become in doubt, a company doctor will be asked to make a ruling on illness and any continued reintegration.