

# Labour Law Questions

## 1. Notice Periods:

### Question 1.1

What should I do when an employee leaves before their notice period is up?

Example: An employee recently resigned giving one calendar month's notice, as per his contract of employment. Two days after resigning, he requested we waive his notice period and allow him to commence work else the next day. He claimed that if he didn't start on that day, he would lose the new job. We informed him that he would have to remain for the notice period to allow the company to arrange for someone else to take over from him. In spite of this, he informed us that he would not come back the next day and left.

What recourse does the company have against this employee? If we do nothing this will create a precedent for others to assume that the employment contract is only there to protect the employee and that they can break conditions as and when they like.

Should we pay him for the two days he worked and outstanding leave, or has he forfeited his rights through his actions?

### Answer:

The company is entitled to sue the employee for breach of contract. The claim will be for the damages that the company has suffered, because of his breach of the contract. The company will have to prove what the damages are. This will certainly send a strong message to other employees, to honor their contractual obligations.

Please note that the employee, by his actions, has not necessarily forfeited his other entitlements eg. leave pay etc. The company will still have to pay him for that.

The employee will be paid until the last day he worked and not for the full notice period; therefore he cannot claim the entire notice period, but only the two days that he worked.

### Question 1.2

When an employee resigns on 24 hours notice, is the company entitled to set off the notice period as prescribed by the Basic Conditions of Employment Act or the contract that the employee signed?

**Answer:**

An employee, who has been with the company for more than six months, but less than one year, must give the company two weeks notice. If the employee has been with the company for 12 months or more, he must give the company 4 weeks notice.

If the employee leaves the company before the end of the prescribed notice periods, the company has a civil claim against the employee for damages, because the employee will be in breach of his contractual obligations to give notice.

Should the employee not adhere to the notice periods, he will only be paid until the last day of his employment with the company.

**2. Fixed term agreements****Question 2.1**

Should the employee be notified before the contract expires?

Example: One of the employees of the company working on a fixed term contract was not notified before the expiry of the agreement about whether or not he is still required to continue in his position. Is he deemed to have ceased employment by the end of the contract date or is he still considered to be employed?

Answer:

Unless the employee can claim to have a reasonable expectation that the employment contract was going to be renewed, the company can argue that the contract ended on the expiry of the fixed term. This is, of course, is very fact specific and depends on the conduct of the parties before the termination date. Most of the companies usually put in a clause that stipulates that there is no expectation of permanent and or another temporary contract.

It makes things easier when the company does not foresee a further extension, to notify the employee that the contract will not be renewed after the date of expiry, rather than to wait until the contract is expired.

**3. Sick Leave****Question 3.1**

We have an employee who has exhausted all their sick leave for this three-year cycle, as well as the annual leave for the current cycle. The employee now needs to go into hospital for an operation and will be off work for six weeks. Are we obliged to pay him?

**Answer:**

Unfortunately, if all sick leave has been exhausted as well as all available annual leave in the current cycles, and the employee requires further sick leave, there is no legal obligation on the employer to pay the employee and the additional requirement may be treated as unpaid leave.

**Question 3.2**

We have a practice in our department stating that if an employee is off sick on a Friday or a Monday, or on a Friday and a Monday, or if he is off sick the day before or the day after a public holiday, he must produce a sick note, otherwise the time-off will be treated as unpaid leave. Is this condition legal?

**Answer:**

Unfortunately, it is not a lawful condition. The Basic Conditions of Employment Act states clearly in section 23 that if an employee has been absent from work for more than two consecutive days (which means three days or more) then he is obliged to produce a medical certificate. A Friday is 1 day only, and a Monday is 1 day only, and the same applies to the day before and the day after a public holiday – those days each constitute only 1 day, and therefore no medical certificate is required. However, if the employee is absent on more than two occasions – even if the occasion is 1 day only – during the same eight-week period, then on the third occasion of absence during that eight-week period the employer is entitled to insist on a sick note, and if it is not produced, the employer is not obliged to pay the employee for the time off. The line manager can request a sick note should there be a suspicion of sick leave abuse by the employee even if the absence is for less than the two days, this is usually where there is a clear pattern of absenteeism by the employee.