

# **ABSENTEEISM: BETTER OR WORSE??**

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**Dedication:**

**I would like to dedicate this minor dissertation to Professors Rochelle le Roux and Paul Benjamin – You have managed to mend a scientific and medical brain to a legal one.**

## Chapter 1

### 1.1 Introduction

Absenteeism is an age old problem for virtually each and every employer. It affects both the private and public sectors. Absenteeism is also an international problem and all countries in the world experience this to varying degrees.

Absenteeism in all its forms has often led to the dismissal of employees. Employees have challenged the substantive and procedural fairness of many of these dismissals in CCMA, Bargaining Councils and South African Industrial Courts. Employers in many instances felt by dismissing employees, they would get rid of the problem of absenteeism. In the process many of the employers have not followed a fair process or there were no substantive reasons for the dismissal. Employees may then be re-instated by the CCMA or courts, or alternatively compensation can be awarded to the unfairly dismissed employee. This may lead to disillusionment on the part of fellow employees who in many instances have to carry the work load of those who are absent.

When employers lose cases of absenteeism in our courts it points to the fact that there may not be substantive reasons for the dismissal or the employer has not followed a proper and fair procedure. It is therefore imperative that employers fully understand what the law says and how to implement legal principles so as to not prejudice the employee.

Absenteeism is not only a problem to fellow employees, but also cost the employer as in many instances the employee has to be paid, unless there is a very good reason why the “no work no pay” principle must be applied.

Absenteeism costs the country and its economy quite substantially. It is the loss of man hours and the cost thereof as well as the loss of productivity and the cost related to this that has employers concerned.

In the process of curbing absenteeism, the correct management of absenteeism has become paramount to the fight against this problem. Managers need to be empowered to effectively manage absenteeism within the boundaries of the law with the emphasis on correcting deviant behaviour and effectively disciplining employees who do not want to comply with rules and regulations.

This dissertation will focus on absenteeism in the workplace with a special emphasis on the legal aspects. There was no empirical research done; an extensive literature survey was done, case law was studied and some personal experience was relied on.

This study will therefore look extensively at the literature and specifically focus on four aspects namely, definitions of absenteeism as per case studies, the causes of absenteeism, the cost and loss of productivity due to absenteeism, how should the employer manage absenteeism in the workplace with the emphasis on case law and lastly and will have a detailed look at the role of health care practitioners and issuing of medical certificates and its impact on absenteeism.

## Chapter 2

### Definitions

#### 2.1 Definitions

##### 2.1.1 Introduction

What is absenteeism? There are a number of terms that are used in this context. For the purpose of this dissertation the definitions used by the courts will be defined and explained.

##### 2.1.2 Absenteeism

*Parsee* defines absenteeism as 'where an employee is away from work for short periods, unauthorised absence of the employee from the work and includes arriving late, leaving early and taking extended tea brakes or lunch breaks'.<sup>1</sup> *Grogan* divides absenteeism into 'late coming, absences from an employee's workstation, and absences from the workplace for itself for short periods'.<sup>2</sup>

According to *Parsee* if an employee is charged with absenteeism it would fall under the category of 'misconduct' and should be dealt with as such.<sup>1</sup>

##### 2.1.3 Abscondment

The term abscondment can be defined as 'the employees absence from work for such a period that leads one to infer that he does not intend to return to work'.<sup>1</sup> It is important for the employer to ascertain if there was an intention not to return to work. This will distinguish abscondment from desertion as will be seen section.

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<sup>1</sup> *Parsee*, NL, *S Afr Mercantile L. J.* 522, 2008.

<sup>2</sup> *Grogan J, Dismissal discrimination & unfair practices.* Juta & Company Ltd, 2005

### 2.1.4 Desertion

*Grogan* defines desertion as 'deemed to have taken place when the employee has actually intimated expressly or by implication that he does not intend to return to work.<sup>2</sup> In *Seabelo v Belgravia Hotel* the following quotation from AA Landman in 'Dealing with desertion (1992) Contemporary Labour Law 75 is made: 'Desertion is distinguishable from absence without leave (AWOL) in that the employee who deserts his or her post does so *with* the intention of not returning, or having left his or her post, formulates the intention not to return. On the other hand, the AWOL employee is absent with the intention of resuming his or her employment'.<sup>3</sup>

The critical aspect to proof is the *intention* of the employee not to return to work. This may not be that easy, but *Landman* has given some guidelines how to go about determining this namely, lack of communication from the employee to the employer and the length of time absence of work.<sup>3</sup>

In *Mofokeng and KSB Pumps* this principle is very clearly illustrated.<sup>4</sup> The employee was arrested for domestic violence and incarcerated for five weeks. The employee's brother informed the employer that his brother was incarcerated. When discharged from prison, the employee presented himself for work whereupon he received a letter of termination. The court ruled that the dismissal was unfair as the employer was aware of the whereabouts of the employee and the employer did not held a disciplinary enquiry making the dismissal procedurally unfair.<sup>4</sup>

In *Trident Steel (Pty) Ltd v CCMA & Others* illustrates a similar principle.<sup>5</sup> The employee was incarcerated and a fellow employee has informed the employer that the employee was incarcerated. A disciplinary hearing was conducted in his absence and he was dismissed. Upon his return to work a

<sup>3</sup> *Seabelo v Belgravia Hotel* [1997] 6 BLLR 829 (CCMA)

<sup>4</sup> *Mofokeng and KSP Pumps* (2003) 24 ILJ 1756 (BCA)

<sup>5</sup> *Trident Steel (Pty) Ltd v CCMA & Others* (2005) 26 ILJ 1519 (LC)



second disciplinary hearing was again conducted and he was dismissed for 'absenteeism from work without leave, failing to inform the employer of his whereabouts'. The dismissal was regarded as both substantively and procedurally unfair.

In *SATAWU obo Langa & Others v Zebediela Bricks (Pty) Ltd & Another* the principle of desertion versus absence is also clearly illustrated.<sup>6</sup>

The definition is quite clear, but employers need to make sure that they follow a fair procedure when dealing with desertion.

## 2.2 Absenteeism and Contract Law

According to The South African Labour Guide, 'under Common Law the following obligations exist even if they are not specifically stated in the Contract of Employment:<sup>7</sup>

- To provide the employer with his labour – ie to be at work;
- To obey reasonable and lawful instructions;
- Not to misconduct himself/herself, ie behave properly according to the accepted norms of society;
- To perform his duties ie to work in a satisfactory manner<sup>4</sup>

Added to this it is expected of the employer to undertake to:

- Remunerate him/her for services rendered;
- Provide safe and sound working conditions.

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<sup>6</sup> *SATAWU obo Langa & Others v Zebediela Bricks (Pty) Ltd & Another* (2011) 32 ILJ 428 (LC)

<sup>7</sup> *The SA Labour Guide; Absenteeism*. <http://www.labourguide.co.za/general/absenteesim-107> [Accessed 12/01/2013]

In *Le Roux et al* the legal aspects of contract law is discussed quite extensively.<sup>8</sup> The following *employee duties* are relevant to absenteeism: 1. **Service** – the employee must deliver services to the employer as per employment contract, 2. **Respect and obedience** – the employee is under the instruction of the employer and must carry out any lawful and reasonable instruction that falls within the scope of the employment contract. In the same paper the following *duties of the employer* also applies: 1. **Remuneration** – following rendering of services by the employee, the employer must remunerate the employee for services rendered. If an employee does not render services as per contract, an employer is under no obligation to remunerate such an employee. 2. **Remunerate for incomplete performance** – in this principle the employee is only remunerated after the service has been delivered. Remuneration can happen before the service delivery is complete, but this will be by mutual agreement. An example of this would be the Public Service paying its staff on the 15<sup>th</sup> of every month, 3. **Industrial action and incomplete performance** - employees have the right to strike in a protected strike; this is not regarded as a breach of contract. Because no services have been delivered by the employee, the employer is also under no obligation to remunerate the employee.

The main obligation of the employee under contract law is to render his or her services to the employer punctually and at an acceptable level. Coming late on duty, leaving early, absence from work etc will prevent the employee from fulfilling his or her contractual duties. In cases like this the employer is entitled to subtract remuneration from the employee as the no work no pay principle of common law is applicable. Dismissal is not normally indicated when employees are absent from duty; there is however an onus on the employer to deal with the matter of absenteeism in a progressive disciplinary manner that is fair if so indicated.

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<sup>8</sup> Le Roux R and Jordan B, *Contract of Employment*. [Service No 51 2009] [SA Labour Law Vol 2 by Clive Thompson and Paul Benjamin]

## 2.5 Conclusion

The above definitions give clarity to the whole concept of absenteeism from a legal point of view. From the human resource management view there may be many types of absenteeism. The intention here is rather to concentrate on the legal definitions since those will be considered in the South African Labour Courts Bargaining Councils or CCMA.

Although just briefly touched on, it is clear from the two cases cited that when dealing with desertion, employers must be careful when they want to dismiss employees when they have deserted the workplace. The basic principles of procedural fairness must at all times be adhered to as our courts expect that these principles are upheld at all times.

## Chapter 3

### The Causes of Absenteeism

#### 3.1 Introduction

Like any phenomenon that is a human resource problem there need to be a very good reason for it. In this chapter the literature is searched for what are the reasons for employees staying away from work without permission. In this chapter a brief study of the possible causes for absenteeism is highlighted. It is not the intention to look at all the reasons for absenteeism as it falls outside the scope of this dissertation.

*Hayday* has divided the causes into four main categories namely:

- Health and lifestyle
- Attitudinal and stress
- Workplace

- Domestic and kinship<sup>9</sup>

### 3.2 Health and Lifestyle

In this category the following health and life style matters are raised namely genuine illness or poor health, smoking, excessive use of alcohol, lack of exercise and body weight.

It stands to reason that there are genuine cases of employees who suffer from ill health which will have an impact on their work attendance. The same applies to somebody who had a major injury. Serious occupational injuries as well as diseases like TB will also contribute to absence from the workplace.

*Ault et al* has indicated that smokers miss more work than non-smokers.<sup>10</sup> They have estimated that the increased smoker absenteeism range as high as 32 per cent.<sup>10</sup>

*Valencia et al* quoted a study that was conducted by the Federation of Industries of the State of São Paulo (FIESP) on the problems of drug addiction and alcoholism in the workplace, they mentioned that these problems gave rise to three times more sick leave than other illnesses, and led to 50 per cent of cases of absenteeism.<sup>11</sup>

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<sup>9</sup> Hayday S, *Managing Absence Effectively*, IES Opinion, 2006, ©Institute for Employment studies. <http://www.employment-studies.co.uk/pdflibrary/op2.pdf> [Accessed 12/01/2013]

<sup>10</sup> Ault RW, Ekelund Jnr RB, Jackson JD, Saba RS & Saurman DS. *Smoking & absenteeism*. Applied Economics, Vol 23, Issue 4, 1991

<sup>11</sup> Valencia JE, Gómez AP, *Workplace Absenteeism and its connection with abuse of alcohol and other psychoactive substances*. Available on line: <http://www.cicad.oas.org/oid/MainPage/Costs/Protocols/Absenteeism.pdf> [Accessed 15/01/2013]

In a comprehensive overview by the *Institute of Alcohol Studies in the United Kingdom* it was found the 'Absenteeism from work through alcohol misuse costs the UK economy about £1.5 billion.<sup>12</sup>

In a study done by *Jacobson et al* it was found that there was a marked difference between those who did no activity versus those who did one day of activity per week.<sup>13</sup> They further found that non-exercisers had 46 per cent greater absence rates than those who exercised once a week.<sup>13</sup>

*Vanwormer et al* did a study to examine the degree to which weight change predicted two year absenteeism.<sup>14</sup> Their study has shown a significant interaction between weight change and baseline body mass index. They have found that the difference in absenteeism ranged from 3.2±1.2 days among healthy weight employees who maintained their weight to 6.6±1.1 days among obese employees who gained weight. Their final conclusion was that healthy weight employees who maintained their body weight over two years had the fewest number of sick days.

It is clear from the above causes that healthy lifestyles have a positive effect on absenteeism.

### 3.3 Attitude and stress

Under this category the following attitude and stress related factors have been found to have an impact on absenteeism: job satisfaction, career

<sup>12</sup> *Alcohol and the Workplace*. Institute of Alcohol Studies, June 2009, <http://www.ias.org.uk/resources/factsheets/workplace.pdf> [Accessed 12/01/2013]

<sup>13</sup> Jacobson BH, Aldana SG. *J Occup Environ Med*. 2001. 43: 1019-1025. On line: <http://www.vielife.com/compendium/en-us/productivity/48/lack-of-exercice-linled-to-raise-illness-related-absence> [Accessed 12/01/2013]

<sup>14</sup> Vanwormer JJ, Linde JA, Harnack LJ, Stovitz SD, Jeffery RW. *Weight Change and Workplace Absenteeism in the Health Works Study*, Oct 2012. <http://www.ncbi.nlm.nih.gov/pubmed/23108493> [Accessed 12/01/2013]

satisfaction, intention to leave, organisational commitment stress, and absence culture.

*Josias* defined “job satisfaction” ‘as the degree to which people like their jobs and the different aspects of their jobs’<sup>15</sup>

*Josias*’ research results depict a statistically significant, albeit inverse relationship between the number of days employees stay absent and their job satisfaction levels.<sup>16</sup> *Josias* has furthermore found that there is a statistically significant, inverse relationship between the number of times employees remained absent and their job satisfaction levels.

*Hayday* also stated that there is a correlation between job satisfaction and being absent from work.<sup>9</sup>

In a survey done in the *Middle East ‘Absenteeism in the Middle East Workplace’* conducted by Bayt.com, low job satisfaction and lack of responsibility was found to be the main reasons for employees being absent from work.<sup>17</sup>

*OI* has shown a very strong correlation between psychological stress and job satisfaction and job satisfaction and absenteeism.<sup>18</sup>

*Johnson* has also indicated that ‘high absenteeism across an organization can indicate a reduced sense of satisfaction among employees.’<sup>19</sup>

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<sup>15</sup> Josias BA, *Thesis for The Degree of Masters of Commerce*, Nov 2005, pg 13

<sup>16</sup> Footnote 13 pg 132

<sup>17</sup> *Survey on absenteeism in Middle East*, Staff report, July 2012.

<http://gulfnews.com/news/gulf/uae/employment/low-job-satisfaction-cited-as-main-reason-for-absenteeism-by-employees-1.1043485> [Accessed 12/01/2013]

<sup>18</sup> *OI S, Predictors of job satisfaction and absenteeism in two samples of Hong Kong Nurses. J Adv Nurs.* 2002 Oct; 40(2): 218-29. <http://www.ncbi.nlm.nih.gov/pubmed/12366652> [Accessed 16/01/2013]

<sup>19</sup> *Johnson S, What is the connection between job satisfaction and absenteeism?* <http://www.wisegeek.com/what-is-the-connection-between-job-satisfaction-and-absenteeism.htm> [Accessed 16/01/2013]

In a study conducted by *Kehinde* the analysis shows that a 78.4 per cent relationship exists between absenteeism and job satisfaction.<sup>20</sup> The study further shows that 61.5 per cent of job satisfaction is explained by absenteeism of employees.

Does career satisfaction have an impact on absenteeism?

*Hayday* stated it very clearly that that ‘career satisfaction is one of the more powerful predictors of absence behaviour in the work place.’<sup>9</sup> Absence is higher with those expressing dissatisfaction with their careers.

In a study conducted by *Cohen et al*, it was revealed that ‘absenteeism can provide an early indication of one’s intentions to leave the organization. This intention will probably be stronger among younger employees, as demonstrated here in the strong and negative effect of age on turnover intentions.’<sup>21</sup>

*Bently* reported that ‘showing appreciation was believed by many participants to represent an action that worked at driving organisational commitment and improved absenteeism performance.’<sup>22</sup>

*Blau* conducted a study amongst 82 registered staff nurses from a large hospital and his study revealed that support for the hypothesis that individuals showing higher levels of job involvement and organisational commitment would exhibit less unexcused tardiness and absenteeism.<sup>23</sup>

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<sup>20</sup> Kehinde OA, *Impact of Job Satisfaction on Absenteeism: A Correlative Study. European Journal of Humanities and Social Sciences*, Vol 1, No. 1 (2011) pg 44

<sup>21</sup> Cohen A and Golan R, *Predicting absenteeism and turnover intentions by past absenteeism and work attitudes*. April 2007. <http://www.emeraldinsight.com/1362-0436.htm> [Accessed 16/01/2013]

<sup>22</sup> Bentley JC, *Doctor of Business Administration*, 2008 University of Phoenix, pg 133

<sup>23</sup> Blau GJ, *Journal of Management*, 1986, Vol 12 No. 4 577 – 584. <http://www.jom.com/content/12/4/577.abstract> [Accessed 16/01/2013]

A lot of researchers regard stress as the one factor that causes the longest and most absences from work. It is also a diagnosis that seems to appear more and more on medical certificates as reasons for sick leave (personal experience).

Workplace stress is the response people may experience when presented with work demands and pressures that are not matched to their knowledge and abilities and which challenge their ability to cope.<sup>24</sup> It has been described as an emotional experience associated with nervousness, tension and strain, brought about by factors related to work.<sup>24</sup> The report lists a long list of stressors that is beyond the scope of this dissertation, suffice to say that these all have an impact on absenteeism.

Apart from work related stress, there are other stressors from the employees personal life's that could add to stress in general and will have an impact, eg personal financial difficulties can cause stress which may have an impact on job performance and absence from work.

In the report released by *Medibank Private* in Australia revealed that days lost per year for stress related presenteeism is 2.1 and stress related absenteeism is 1.1 bringing it to a total of 3.2 days per year lost to the Australian economy.<sup>23</sup>

Briefly the above studies have shown the impact that 'stress' has on the employee as far as absenteeism is concerned.

In the South African context there seem to be a culture of absence especially when it comes to sick leave. Some Public Servants believe that they must take all their sick leave by the end of the sick leave cycle. In many instances public departments see a rise in absenteeism towards the end of a sick leave

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<sup>24</sup> Medibank Private report: *The cost of workplace stress in Australia*, Aug 2008.  
<http://www.medibank.com.au/Client/Documents/Pdfs/The-Cost-of-Workplace-Stress.pdf>  
[Accessed 16/01/2013]



cycle (personal observation). In many departments this is an infested culture which should be changed by educating employees on sick leave.

*Bently* expounds on absence culture from the literature.<sup>25</sup> *Johns et al* introduced the concept of absence culture in which they defined it as ‘the set of shared understandings about absence legitimacy in a given organization and the established custom and practice of employee absence behaviour and its control...’<sup>26</sup>

In the Eastern Cape it was standard practise on payday (15<sup>th</sup> of the month) that staff organises themselves so that half of them will be away in the morning to go to the bank and draw their money, whilst in the afternoon the other half of the staff went to the bank and of course did not bother to come back. When the author questioned the practise he was told it is the ‘culture’ in that hospital. This is described as absence culture as social phenomenon<sup>24</sup> with absenteeism behaviour learned to the degree and type of absence acceptable in the group setting as stated by *Chadwick-Jones et al.*<sup>27</sup> The example cited of the Eastern Cape Hospital falls within this social phenomenon created by the employees themselves.

Absence culture can’t be positive; unless the culture is that there should be minimal absence from the work place. It is normally the other way around, with an absence culture that is problematic to the employer and to the detriment of services rendered by the employer. As part of the management (will be discussed later), this kind of culture need to be changed. It is also incumbent on the employer to prevent such a culture of developing by taking the necessary steps to combat it.

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<sup>25</sup> Footnote 22

<sup>26</sup> Johns, G. and Nicholson, N. (1982). The meanings of absence: New strategies for theory and research. In B.M. Staw and L.L. Cummings (Eds.), *Research in organizational behaviour*, 127-172. Greenwich, CT: JAI Press.

<sup>27</sup> Chadwick-Jones, J.K., Brown, C.A., Nicholson, N., and Brown, C. (1982). *Social psychology of absenteeism*. New York: Praeger Publishers.

### 3.4 Workplace

Are there factors regarding the workplace that affects absenteeism? The following factors have been found to have an impact on absenteeism in the workplace: working patterns, health and safety, travel times to work and excessive hours and workload.<sup>9</sup>

In a study done by *Gaffney* on absenteeism in the Australia Public sector, he found that although lower in ranking changes in work organisation (work patterns) will decrease levels of absenteeism in the Australian Public service. A similar trend was found the United Kingdom Public Sector.<sup>28</sup>

A report published by the *Royal Australasian College Of Physicians* stated that workplace autonomy, control, the latitude permitting independent decision making, participatory versus centralised workplace hierarchies can all influence absenteeism.<sup>29</sup>

*Bentley* stated in his thesis 'joint collaboration based upon clear expectations and support offer lucid opportunity for progress. Teamwork forms the basis for expanded culture development that is satisfied with rewards and incentives aimed at behaviour change that improves absenteeism. Cooperation and flexibility allow for interdependence. A combination of jointly communicated and supported structure with incentive to come to work is a powerful combination for positive culture change and results.'<sup>30</sup>

*Maliakal*<sup>31</sup> stated in an article that 'doing the same job over a period of time can get monotonous. The employees find the job functions boring. They choose to do something interesting rather than come to work'<sup>30</sup>

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<sup>28</sup> Gaffney F, *Turning the tide on absenteeism: The Australia Public Service experience*. Nov 2009. <http://www.hrdaily.com.au/files/091202NNTT.pdf> pg 10 [Accessed 16/01/2013]

<sup>29</sup> *Workplace Attendance and Absenteeism. The Royal Australasian College of Physicians*. Dec 1999.

<sup>30</sup> Footnote 22 pg 137

<sup>31</sup> Maliakal L, *Absenteeism in the workplace*. Sep 2011 <http://www.buzzle.com/articles/absenteeism-in-the-workplace.html> [Accessed 12/01/2013]

Health and safety is a factor which need close scrutiny in the workplace. In the public sector as well as the private sector, leave taken for occupational injury and disease are separate from ordinary sick leave. We normally do not include occupational injuries and diseases in the category of absenteeism. We have experience that people are on occupational leave for quite extended periods of times. Sometimes up to two years. It will obviously have an impact on the work situation like all other absences would.

The basic premise of the Occupational Health and Safety Act is 'to provide for the health and safety of persons at work and for the health and safety of persons in connection with the use of plant and machinery.'<sup>32</sup> In the employment contract it is also stipulated that amongst other things the employer must provide a safe working environment for its employees.

According to *Evans et al* genuine illness and accidents contribute between 50 to 66 per cent to employee absence in organisations and are major contributors to employee absence.<sup>33</sup>

According to the *International Labour Organization* some two million people die every year from work-related accidents and diseases.<sup>34</sup> An estimated 160 million people suffer from work-related diseases, and there are an estimated 270 million fatal and non-fatal work-related accidents per year. Employers face costly early retirements, loss of skilled staff, absenteeism, and high insurance premiums due to work-related accidents and diseases according to the *ILO*.<sup>34</sup> This information says it all in terms of the effect of occupational diseases and injury on absenteeism.

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<sup>32</sup> Occupational and Safety Act 85 of 1993 as amended.

<sup>33</sup> Evans, A. & Palmer, S. 1997. *From Absence to Attendance*. Wiltshire: Cromwell Press. Pg

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<sup>34</sup> *International Labour Organization. Occupational safety and health.*

<http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/occupational-safety-and-health/lang--en/index.htm> [Accessed 18/01/2013]

According to *Babaita* transportation problems (travelling) are one of the causes of absenteeism.<sup>35</sup>

In their report the *Australasian Faculty of Occupational Medicine* there is an indication that distance from work also appears to influence likelihood of sickness absence because of distance or transport difficulties, which may be magnified by illness or by presenting additional barriers or disincentives.<sup>28</sup>

*Brits et al* maintain that the distance between an employee's residence and place of work has an influence on absenteeism: 'The further away from work an employee lives, the more often he or she is absent.'<sup>36</sup>

In the South African context this could be a factor that is sometimes beyond the employees. Due to the previous political system, the poor were located outside the cities with the result that they have to travel the furthest to their place of employment. Should there be a failure in their transport system, it stands to reason that they will be absent. We have seen this many times especially when there is a strike in the transport system. Many of the people in South Africa are reliant on the public transport system. At this point in time we do not have a very efficient public transport system either, but it is all that the people have and they must make do with it.

According to *Hayday* a strong link exists between those who consistently work more than their contracted hours and both psychological and physical sickness levels.<sup>9</sup>

Excessive workload is cited as one of the causes in absenteeism by the *Attendance Management – working together* group.<sup>37</sup>

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<sup>35</sup> Babaita IS. *The effect and measurement of workplace absenteeism in the banking industry in Nigeria*. *LJOMASS* Vol 1 (1) Dec 2008

<sup>36</sup> Brits RN. & Reese K. 1982. *Business Economics for South African Students*. 2nd ed. Johannesburg: Mc Graw-Hill Book Company.pg 204

According to the *Australian Faculty of Occupational Medicine* 'increased absenteeism occurs with increased working hours and overtime.'<sup>38</sup>

It is quite clear from the literature that there are number of workplace factors that impact on absenteeism. The employer cannot ignore this, as it will have an impact on absenteeism.

### 3.5 Domestic and kinship

This section focuses on how the domestic situation of the employee affects the rates of absenteeism.

According to *Hayday* most studies of absence show clear gender differences with woman having higher absences than men.<sup>9</sup>

*Ichino et al* has concluded that in most countries women take more sick days than men.<sup>39</sup> Reasons are given but again are beyond the scope of this dissertation.

*Voss et al.* found a modest relationship between absenteeism and number of dependents.<sup>40</sup> *Voss et al* also found that respondents with small children between the ages 0-6 years reported higher rates of absence than those with older children.<sup>40</sup>

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<sup>37</sup> *Attendance Management. Introduction to Attendance Management.* March 2012.  
<http://benefits.org/interface/cost/absent.htm> [Accessed 18/01/2013]

<sup>38</sup> Footnote 28 pg 16

<sup>39</sup> Ichino A and Moretti E, Biological Gender Differences, Absenteeism, and the Earnings Gap. *American Economic Journal: Applied Economics* 2009, 1:1, 183–218 (pg 212)

<sup>40</sup> Voss, M, Floderus, B., & Diderichsen, F. (2001). Changes in sickness absenteeism following the introduction of a qualifying day for sickness benefit-findings from Sweden Post. *Journal of Public Health* 29 : 166-174.

*Hayday* contends that where a link with domestic responsibility has been found, factors such as the number of children under 16 and the presence of informal support mechanisms have been shown to be significant.<sup>9</sup> This is particularly the case in the South African context where the women still plays a major role in the lives of her children. Should something happen to them she would be the first to respond, and taking a day or two off to care for them would almost come natural to mothers.

Again *Hayday* is up front in mentioning flexible work practices as a factor in reducing absenteeism. She states clearly that 'the availability of a range of working arrangements and flexible hours in the workplace, aids female employees to cope with short-term domestic problems without having to claim to be ill.'<sup>9</sup>

The *Australasian Faculty of Occupational Medicine* found that 'decreasing absenteeism has been associated with flexible working hours and the converse with inflexible hours.'<sup>28</sup>

*Josias* makes a very good argument for this particular aspect. She noted that 'employers need to develop a culture within organisations that recognises employees not only as employees but as individuals who have lives outside of work. Therefore, one of the strategies available to organisations to address absence resulting from family related problems, is the introduction of flexible work practices. These include alternative working arrangements such as a few hours leave for school functions, telecommuting and also compressed work weeks.'<sup>41</sup>

In the technologically complex and advanced environment that we find ourselves more and more in, the traditional way of working is drastically changing. It is a well-known fact that in the private sector, more and more companies have introduced flexible hours. In the Public Sector there is now a

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<sup>41</sup> Footnote 15 pg 28

similar move and discussion is happening at the highest level to seriously look at flexi time in the Public Sector where it can be applied.

### **3.6 Conclusion**

It is very clear from the section above that there are a great number of factors that in one way or another impact on the absence from the workplace. This is merely an overview to give an insight into some of the many reasons and also the complexities that some of the causes bring especially when the employer needs to manage absenteeism in the workplace.

## **Chapter 4**

### **The Cost and Loss of Productivity Due To Absenteeism**

#### **4.1 Introduction**

Cost and loss of productivity is the one reason why employers need to look seriously at the absenteeism and how to combat it. This chapter will show the immense cost that absenteeism has not only on the employer, but also on the economy of a country as a whole. Not only is there a direct cost to the company, but there are indirect costs due to loss of productivity which in turn also has costs. In a website paper released on *Absenteeism and Staff retention* in New Zealand, the author has categorised costs into direct and indirect costs.<sup>42</sup>

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<sup>42</sup> *Absenteeism and Staff Retention.*

[http://www.hrinz.org.nz/Site/Resorces/Knowledge\\_Base/A-H/Absentism.aspx](http://www.hrinz.org.nz/Site/Resorces/Knowledge_Base/A-H/Absentism.aspx) [Accessed 12/01/2013]

## 4.2 Direct costs

These are costs that are directly linked to the absence of an employee namely:

- daily rate of pay the organisation has to pay for someone who has not performed any work for the business;
- other costs incurred, that is overtime paid to other staff to cover the absence, engagement of temporary staff.

## 4.3 Indirect costs

These can be categorised as follows:

- Time, paperwork and administration for the line manager and the HR/Payroll;
- Inconvenience: the amount of manager's time diverted from other management responsibilities ie finding replacement staff, reallocating work, etc;
- Effect on other team members: added stress, morale, work not completed or missed deadlines;
- Lapse in quality due to overworked team members or poorly trained staff being substituted into unfamiliar role;
- Impact on customers: upset customers due to missed timelines and/or issues with quality, etc.<sup>42</sup>

## 4.4 The literature on cost numbers

In a website article by *HR Future* in 2010, research conducted on absenteeism in South Africa confirms that it is reaching staggeringly high levels, and could be costing the country's economy as much as R12 billion



per year.<sup>43</sup> Research conducted by *HR Future* revealed that in the average company approximately 4.5 per cent of the workforce is absent on any given day. In certain companies this figure is as high as 18 per cent.<sup>43</sup> *HR Future* also contend that the wellness of employees is vital if a company is to improve their bottom line. A healthy workforce is absent less often and has improved productivity.<sup>43</sup>

*Wolfe* reported that the United States' largest employers estimate that unscheduled absenteeism costs their businesses more than \$760 000 per year in direct payroll costs, and even more when lower productivity, loss of revenue and the effects of poor morale are considered.<sup>44</sup>

*Quill* reported that unhealthy United States employees who miss work cost businesses more than \$153 billion in lost productivity each year.<sup>45</sup>

*Corporate Governance* confirmed the figure quoted earlier that companies in South Africa are losing more than R12 billion annually due to absenteeism.<sup>46</sup> The article also quotes Stats SA that in 2000 seven million workers were absent from work, which is a fraction compared to the 397 per cent leap it took up until 2012. *Corporate Governance* stated that a third (33.3 per cent) of public sector workers were absent for health reasons, compared to 9.2 per cent of private sectors workers.<sup>46</sup>

*Weiner* reported that according to U.S Bureau of Labor Statistics, American businesses lose an average of 2.8 million work days each year. These

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<sup>43</sup> *Absenteeism reaches new heights in South Africa.*

<http://www.hrfuture.net/wellness/absenteeism-reaches-new-heights-in-south-africa-.php>  
[Accessed 12/01/2013]

<sup>44</sup> Wolfe I, Perfect Storm 2.0. *Absent Employees Drain Productivity and Profits.*  
[http://hrblog.typepad.com/perfect\\_labor\\_storm/2012/08/absent-employees-drain-productivity-and-profits.html=9XZZHloYKln](http://hrblog.typepad.com/perfect_labor_storm/2012/08/absent-employees-drain-productivity-and-profits.html=9XZZHloYKln) [Accessed 12/01/2013]

<sup>45</sup> Quill S, Gallop Report: *Unhealthy U.S. Workers' Absenteeism Costs \$153 Billion Annually.* <http://www.coreperformance.com/dialy/well-at-work/gallop-report--unhealthy-us-worker-absenteeism-costs-153billion.html> [Accessed 12/01/2013]

<sup>46</sup> Corporate Governance. *What does absenteeism really cost?*  
<http://www.moneyweb.co.za/moneyweb-south-africa/what-does-absenteeism-really-cost.html>  
[Accessed 12/01/2013]

absences cost U.S Employers more than \$74 billion.<sup>47</sup> *Weiner* also quoted a *Mecer/Marsh* survey on health, productivity and absence management that reported that unplanned absences caused a 54 per cent decrease in productivity/output and a 30 per cent drop in sales and customer service.<sup>47</sup>

*Black's* review revealed the costs of illness among the UK's working-age population, which amounted to more than £100 billion per year. About 172 million working days were lost to sickness absence, costing over £13 billion, while presenteeism cost approximately £15 billion per year.<sup>48</sup>

*Şenel et al* reported that the cost of absenteeism for Canadian businesses amounts to almost \$150 billion per year.<sup>49</sup>

In the *Australian* system it is estimated that 92 million days were lost in 2008, or \$26.6 billion to the economy.<sup>50</sup>

#### 4.5 Conclusion

The facts above are staggering and points to a very serious situation. Throughout the literature survey it is clear that generally very little is done to curb absenteeism. It is also clear from my investigation that very few companies bother to do absenteeism statistics and cost calculations. If this should be done, Chief Executive Officers and managers will wake up to a very hard reality. It is seen in these figures that absenteeism is very costly to the company and the country's economy.

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<sup>47</sup> *Weiner J*, *The hidden cost of Absenteeism*. 2010, <http://www.workplaceoptions.com/news/press-releases/press-release.asp?id=3981569.html> [Accessed 12/01/2013]

<sup>48</sup> *Black, C.* (2008). *Working for a healthier tomorrow. Dame Carol Black's Review of the health of Britain's working age population*. Department of Work and Pensions.

<sup>49</sup> *Şenel B and Şenel M*, The Cost Of Absenteeism And The Effect Of Demographic Characteristics And Tenure On Absenteeism *Interdisciplinary Journal Of Contemporary Research In Business*, September 2012 Vol 4, No 5 1142 - 1151

<sup>50</sup> Footnote 26 pg 3

## Chapter 5

### Managing Absenteeism

#### 5.1 Introduction

*Wolfe* makes the following statement: 'The biggest mistake that companies make, is they lack proper policies and procedures....and even when they do, they do not enforce them consistently. Supervisors often have to make their own rules about absences, which can vary depending on the supervisor's philosophy, their engagement with employees, availability of replacement workers, busyness of production, and so on.'<sup>44</sup>

Absenteeism amounts to a human behaviour that need to be changed. We all know how difficult it is to change human behaviour; this may explain why absenteeism is rampant and in many instances out of control. Absenteeism also needs to be managed by supervisor on a continuous basis. A supervisor cannot only act when the problem is already out of control. Failure to manage the problem from the start will make it more difficult to do it at a later stage. From a labour legislation point of view there are many areas that supervisors need to be fully aware of to prevent unnecessary CCMA and court cases or loses their cases in the CCMA and Labour Courts.

#### 5.2 Managing absenteeism and the Law

##### 5.2.1 Legislative framework

Managing absenteeism within the South African context will happen within the confines of the relevant legislation.

The following South African legislation is applicable to the management of absenteeism:

- Basic Conditions of Employment Act <sup>51</sup>
- Labour Relations Act <sup>52</sup>
- Public Service Act <sup>53</sup> (in the case of Government employees)

The Labour Relations Act (LRA) recognises three grounds on which an employer can terminate an employee's contract of employment:

- Misconduct
- Incapacity
- Operational requirements

An employee's absence from work may be treated either as a form of misconduct or as incapacity, depending on the reason for the absence. In order for absenteeism to constitute misconduct the element of fault must be present.

In the process of dealing with the absenteeism either as misconduct or incapacity a fair process needs to be followed at all times.

*Fulton et al* reports that in assessing the fairness of a dismissal for absenteeism, the South African courts normally consider the following factors:<sup>54</sup>

- Absences to be of unreasonable duration/frequent enough to disrupt work;
- The reason for the employee's absence from work;
- The employee's employment history;
- The employer's treatment of absenteeism in the past.

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<sup>51</sup> Basic Conditions of Employment, Act 75 of 1997 as amended Section 22

<sup>52</sup> Labour Relations Act 66 of 1995, Sections 188 and 189

<sup>53</sup> Public Service Act (Proc 103), 1994 as amended by Act 30 of 2007

<sup>54</sup> Fulton K and Mudely E, *Dealing with absenteeism in the workplace*.

<http://www.bowman.co.za/News-Blog/Blog/Dealing-with-absenteeim-in-the-worplace.html>  
[Accessed 12/01/2013]

## 5.2.2 Dismissal due to desertion

This matter has briefly been touched on in the definition chapter. A detailed exposition is necessary for supervisors to understand the implications of dismissals due to desertion.

It has been stated before what desertion means and what the requirements are that employers should look out for not to be turned back by the courts and instructed to reinstate the employee.

Employees have different rules regarding desertion and these are sometimes contained in Collective Agreements between the employer and the unions. In the Public Service (Department of Public Service and Administration) the applicable legislation states desertion as 'being absent without permission exceeding a period longer than one calendar month'<sup>55</sup>

Desertion was tested in the Labour Court with *PAWUSA & another v Department of education, Free State Province & others*.<sup>56</sup> In this case the employee had been discharged in terms of s 17(5)(a)(i) of the Public Service Act of 1994 for being absent from work for a period more than a calendar month without permission of the head of department. The employee was not happy with the 'dismissal' and approached his Bargaining Council, GPSSBC. The arbitrator ruled that a discharge in terms of s 17(5)(a)(i) was not a dismissal and with the result the council had no jurisdiction to hear the matter. The court agreed with the arbitrator and ruled that 'in the absence of a decision by the employer to dismiss, as the discharge takes place by operation of the law, neither the CCMA nor council would have jurisdiction to entertain the dispute'.<sup>56</sup> The court also ruled that should the employee want the employer to reinstate him in terms of s 17(5)(b) which states: 'If an officer who is deemed to have been discharged, reports for duty at any time after the expiry of the period referred to in paragraph (a), the relevant executing

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<sup>55</sup> Footnote 53 section 17(5)(a)(i)

<sup>56</sup> *PAWUSA & Another v Department of Education, Free Sate Province & Others*, (2008) 29 ILJ 3013 (LC)

authority may on good cause shown and notwithstanding anything to the contrary contained in any law, approve the re-instatement of that officer in the public service in his or her former or any other post or position, and in such case the period of his or her absence from official duty shall be deemed to be absence on vacation leave without pay or leave on such other condition as the said authority may determine.<sup>57</sup> This section would satisfy the *audi alterem partem* rule, which is not afforded in s 17(5)(a)(i).

In *National Union of Metalworkers of SA on behalf of Magadla and AMT Services (Pty) Ltd* the facts were different.<sup>58</sup> In this case the employee was absent without explanation for six weeks while held in police custody. The employee was in police custody for assault. His brother did manage to inform the employer about his brother's incarceration. The employee also tried to contact his employer by asking the police to phone his employer, it was turned down. After his release six weeks later he reported for duty but was then informed that his employment had been terminated for desertion. The employer maintained that the employee was not dismissed but he had repudiated his contract of employment. The court ruled that the termination of the employee was unfair as the employee could explain why he could not contact his employer and had no intention to leave his employment by reporting for duty, ie not desertion but rather leave of absence. This case clearly illustrates that employers should be careful in applying these rules, but do not follow eg a fair process in determining desertion.

In *Public Servants Association of SA & Another v Premier of Gauteng & Others*, the court ruled that services terminated by s 17(5)(a)(i) is by *operation of law*. It also ruled that because there was no *decision* on the part of the employer, the Labour Court had no jurisdiction to rule on the matter before conciliation and arbitration has not been sought.<sup>59</sup>

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<sup>57</sup> Footnote 53 Section 17(5)(b)

<sup>58</sup> *National Union of Metalworkers of SA on behalf of Magadla and AMT Services* (2003) 24 ILF 1769 (BCA)

<sup>59</sup> *Public Servants Association & Another v Premier of Gauteng & Others* (1999) 20 ILJ 2106

In *Phenithi v Minister of Education & Others*, the following was ruled on.<sup>60</sup> The employee received a notice in terms of s 14(1)(a) of the Employment of Educators act 76 of 1998 discharging her from service for a period exceeding 14 consecutive days without permission. The employee then approached the Bargaining Council to set aside the 'dismissal' as an *unfair* labour practise. The Bargaining Council ruled that it has no jurisdiction to rule on the matter as the notice was by an *operation of law*. The matter was then heard in the High Court for dismissal as an unfair labour practice and s 14(1)(a) was unconstitutional. The High Court dismissed the application. The matter was then heard in the Supreme Court of Appeal (SCA). The SCA agreed with the high court and the appeal was dismissed.

In *Public Servants Association of SA on behalf of Van der Walt v Minister of Public Enterprises & Another* the court dealt with the matter of dismissal by operation of law versus unfair dismissal.<sup>61</sup> In this case the employee was on precautionary suspension with full pay for a period of one month after which she was informed by letter to report for duty. She did not report for duty as she was under the impression that her precautionary suspension was extended. After a period of ninety days she was informed in writing that she had been discharged under s 17(5)(a)(i) of the PSA. She was invited to make representations in terms of s 17 (5)(b) of the PSA regarding reinstatement which she did not do. She referred the matter to the relevant bargaining council for unfair dismissal. The council ruled that it did not have jurisdiction to rule on the matter as it was not a dismissal as contemplated in s 186 of the LRA of 1995. The court made a very clear ruling in this regard. It ruled that all the provisions of s 17(5)(a)(i) of the PSA had been executed by the employer and that the employer had invoked the deemed provision of the act. The employee was invited to make representations to reinstate her in terms of s 17(5)(b) of the PSA which she did not do, therefore forfeiting the opportunity to be reinstated. The employee's application to the Labour Court was dismissed.

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<sup>60</sup> *Phenithi v Minister of Education & Others* (2006) 27 ILJ 477

<sup>61</sup> *PSA of SA on behalf of Van der Walt v Minister of Public Enterprises & Another* (2010) 31 ILJ 420

In *Kader and SA Police Service* the court dealt with jurisdiction and the deemed dismissal provision.<sup>62</sup> In this case the employee was absent from duty without permission from a certain date. Before the 30 days elapsed the employer phoned the employee and informed her to report for duty to her supervisor as she has been absent without permission. She did not report for duty Nineteen days later she received a letter informing her that she had been deemed dismissed from 4 March 2009 in terms of s 17(5)(a)(i) of the PSA. The matter was then referred to the relevant bargaining council who ruled not to have jurisdiction as this was a dismissal by operation of law.

The court ruled that the employee was phoned before the 30 days have elapsed and informed to report for duty and she was not informed that failure to report would lead to “dismissal”. What the court basically ruled is that the employer did not adhere to the provisions of s 17(5)(a)(i) of the PSA and because of this the bargaining council had jurisdiction to hear the case.

In *Grootboom v National Prosecuting Authority & Another* there was a very clear ruling on the deemed dismissal provision of s 17(5)(a)(i) of the PSA.<sup>63</sup> In this case the employee was on suspension without pay and awaiting the continuation of a pre-dismissal hearing when he applied for leave to study overseas. The NPA was only prepared to give unpaid leave and did not authorise the leave. The employee went overseas to do his studies. The employee then received a letter from his employer invoking the deemed dismissal provision of s 17(5)(a)(i) of the PSA. The employee then petitioned the Minister for his reinstatement in terms of s 17(5)(b) of the PSA. The Minister did not grant the reinstatement by upholding the decision of the NPA. The court confirmed previous rulings that it does not have jurisdiction on s 17(5)(a)(i) of the PSA as this is a dismissal by operation of law. This court also affirmed the ruling that the refusal by an employer to reinstate an employee whose employment has been deemed dismissed by operation of law constitutes administrative action, which can be challenged before the Labour Court in terms of s 158 (1)(h) LRA. The employee failed to make out

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<sup>62</sup> *Kader and SA Police Service* (2009) 31 IJL 2242

<sup>63</sup> *Grootboom v NPA & Another* (2010) 31 ILJ 1875



a case justifying changing the action of the employer. The application was dismissed.

In *Mahlangu v Minister of Sport & Recreation* again the provisions in s 17(5)(a)(i) of the PSA and s 17(5)(b) of the PSA have been dealt with.<sup>64</sup> The employee was absent from work without authorization for a period more than a calendar month. The employee received a letter to inform him that he has been deemed dismissed and were also informed that he can make representation to the executing authority for reinstatement according to s 17(5)(b) of the PSA. In the employee's submission he indicated that he was an alcoholic and his absence was due to his ill health. The employer has then sent him to a medical practitioner for evaluation. The medical practitioner recommended to the employer that the employee should be admitted for rehabilitation after which he should be fit to resume his normal duties. The employer referred the employee to another doctor who made similar a recommendation. The Director-General then made submissions to the Minister rejecting the employee's submissions. After the Minister considered both submissions and accepted that of the Director-General. The court ruled that in order for the employer to apply s 17(5)(b), it has to take into account whether the absence of leave was wilful and whether the employment relationship has broken down. In this case the court ruled that the Minister did apply his mind, but the employee brought a case alleged unfair dismissal instead of petitioning reinstatement according to s 17(5)(b) of the PSA.

From the above cases it is clear that employers need to exercise caution in using rules or sections in acts to call for desertion. In summary s 17(a)(i) of the PSA has a few elements that need to be adhered to before a person can be deemed dismissed using this section of the Act. These are, the employee must be absent for more than a calendar month without permission, shall be deemed to have been dismissed from the public service on account of misconduct with effect from a date immediately succeeding his or her last

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<sup>64</sup> *Mahlangu v Minister of Sport & Recreation* (2010) 31 ILJ 1907

day of attendance at his or her place of duty. When an employee applies for reinstatement as provided for in s 17(5)(b), the executing authority must apply his or her mind to the presentation made by the employee. Provisions of this section need to be followed carefully as the courts will scrutinise the process very carefully and if employers erred the courts may reinstate employees or order compensation. Unions also need to ensure that they members understand the consequences of their actions and can potentially lose their jobs when the rule is applied correctly.

### 5.2.3 Dismissal due to illness

The question can be asked, 'can an employer dismiss an employee who is ill'. The answer is not simple and straightforward, but will be expanded upon in this section. Section 6.2. deals with the leave provisions as well as problems regarding abuse of sick leave. This section deals exclusive with the matter when an employer has dismissed an employee that was ill.

The Labour Relations Act 66 of 1995 Code of Good Practice: Dismissals sets out the guidelines for dealing with employees who are unable to perform their work due to illness or injury in Item 10.<sup>65</sup>

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<sup>65</sup> (1) Incapacity on the grounds of ill health or injury may be temporary or permanent. If an employee is temporarily unable to work in these circumstances, the employer should investigate the extent of the incapacity or the injury. If the employee is likely to be absent for a time that is unreasonably long in the circumstances, the employer should investigate possible alternatives short of dismissal. When alternatives are considered, relevant factors might include the nature of the job, the period of absence, the seriousness of the illness or injury and the possibility of securing temporary replacement for the ill or injured employee. In cases of permanent incapacity, the employer should ascertain the possibility of securing alternative employment, or adapting the duties or work circumstances of the employee to accommodate the employee's disability.

(2) In the process of investigation of subsection (1) the employee should be allowed the opportunity to state a case in response to allegation of incapacity and be assisted by a trade union representative or fellow employee.

(3) The degree of incapacity is relevant to the fairness of any dismissal. The cause of the incapacity may also be relevant. In the case of certain kinds of incapacity, for example alcoholism or drug abuse, counselling and rehabilitation may be appropriate steps for an employer to consider.

(4) Particular consideration should be given to employees who are injured at work or who are incapacitated by work related illness. The courts have indicated that the duty on the employer to accommodate the incapacity of the employee is more onerous in these circumstances'

The courts have dealt with absenteeism dismissals due to illness in two ways, namely misconduct or incapacity.

In *AECI Explosives Ltd (Zomerveld) v Mambalu* the court dealt effectively with misconduct versus incapacity due to illness.<sup>66</sup> The court determined that genuine illness may cause incapacity, whilst malingering (abuse of sick leave) may be regarded as misconduct. The court made the following observation: 'For even if the absence is due to genuine medical reasons it may still be regarded as sufficiently incompatible with the needs of the organisation'. The court also determined the relevant factors that will determine whether an employee would or can be dismissed for incapacity namely the nature of the incapacity, the cause of the incapacity, the likelihood of recovery, improvement or recurrence, the period of absence and its effect on the employer's operations, the effect of the employee's disability on the other employees and the employee's work record and length of service. In this case the employee was dismissed for abuse of sick leave.

In *National Union of Metalworkers of SA on behalf of Ivasen and Whirlpool SA (Pty) Ltd* an employee was also dismissed for illness related absenteeism over an extended period of time.<sup>67</sup> The employer has followed a fair process in addressing the absenteeism, and the arbitrator held the dismissal to be procedurally and substantively fair.

In the case of *Food & Allied Workers Union on behalf of Dlamini and Kellogs SA* the employee was dismissed after she was granted 30 days sick leave and she took a further 15 days unauthorised leave. The arbitrator after hearing all the facts concurred with the employer that misconduct was committed.<sup>68</sup> The arbitrator was also of the view that for the length of period that the employee stayed away, dismissal was warranted.

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<sup>66</sup> *AECI Explosives Ltd (Zomerveld) v Mambalu* (1995) 16 ILJ 1505 (LAC)

<sup>67</sup> *National Union of Metalworkers of SA on behalf of Ivasen and Whirlpool SA (Pty) Ltd*, (2005) 26 ILJ 985 (BCA)

<sup>68</sup> *Food & Allied Workers Union on behalf of Dlamini and Kellogs SA*, (2003) 24 ILJ 645 (CCMA)

The above cases clearly show that employees can be dismissed for sick leave abuse as a form of misconduct.

The next case(s) will look at dismissals due to incapacity due to illness. It has been previously stated that to be able to effect a dismissal due to incapacity due to illness, one needs to follow the Code of Good Practise: Dismissal.<sup>65</sup>

In *Ferreira and Standard Bank of SA*<sup>69</sup> the facts are as follows: the employee a mobile home consultant was involved in a motor vehicle accident with resultant injuries that rendered her unable to perform her normal duties. Her doctors recommended that she be given an administrative post with light duties. She could not cope using a telephone and a computer as this caused both arms to be painful. Application for early retirement was declined. Her request for a half day position was also declined. The employee complained about her working conditions, left work early and was frequently absent. After two years during which a number of discussions were held with the employee, the employer terminated her employment for incapacity. The court found her dismissal to be unfair as the employer did not follow a fair process before dismissing the employee. This show as with any dismissal case, the employer need to convince the court that it followed a process that was substantively and procedurally fair as outlined in The Code of Good Practice: Dismissal of the Labour Relations Act.

The above cases show clearly that dismissal is possible for prolonged periods of illness, but the court will determine whether it is a dismissal due to misconduct or due to incapacity. For each one there is a very specific process which needs to be followed to make the procedure fair. The court is not very forgiving for a dismissal which is followed by an unfair process.

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<sup>69</sup> *Ferreira and Standard Bank of SA* (2006) 27 ILJ 1547

### **5.2.4 Dismissal due to incapacity other than ill health, injury or poor performance**

In *Samancor Tubatse Ferrochrome v Metal & Engineering Industries Bargaining Council & Others* the facts are as follows<sup>70</sup>: the employee was incarcerated for 150 days due to being a suspect in an armed robbery case. Whilst in custody the employee received a letter from his employer that he was dismissed on the grounds of incapacity that he was physically not able to perform his duties. After the employee was released from custody a post-dismissal hearing was conducted which upheld the dismissal. After hearing the facts the court ruled that it was not reasonable to expect the employer to keep the position of the employee open for an unknown length of time, especially if the employee plays a crucial role in the company. The court found that the dismissal was substantively fair. The court further ruled that a fair procedure has not been followed in that the employee was dismissed in his absence without giving him a fair opportunity to defend himself. The dismissal was therefore ruled to be procedurally unfair.

This case highlights a few matters namely; an employer cannot be expected to keep an employee in position for any length of time if there is no indication when the employee will return. Secondly it is incumbent on the employer to follow a fair process when executing discipline on the employee. The courts are strict and rightly so as the rights of the employee must at all times be upheld.

### **5.2.5 Dismissal due to alcoholism or drug abuse**

The Code of Good practise: Dismissal is also clear on what the employer should do in case the incapacity is due to alcoholism or drug abuse<sup>65</sup>. It states that the employer should take the steps of counselling and rehabilitation to assist the employee to resolve his/her drug problem before dismissal is considered.

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<sup>70</sup> *Samancor Tubatse Ferrochrome v Metal & Engineering Bargaining Council & Others* (2010) ILJ 1838 (LAC)

This type of incapacity can also lead to absence from work. Employers need to be substantively and procedurally fair when dealing with drug dependence or taking alcohol whilst on duty or coming to work under the influence of a drug or alcohol.

In *SALSTAFF/AIWU on behalf of Govender v SA Airways* the employee was dismissed for gross dishonesty for not declaring his earlier dependence on cocaine during medical testing for employment and for absconding from a clinic to which SAA has referred him for rehabilitation.<sup>71</sup> Looking at all the facts and processes followed by the employer regarding the dismissal the arbitrator was satisfied that within the context of the employment of the employee as a cabin crew, the dismissal was justified under the circumstances.

Other tribunals however have ruled differently in other cases. In *Chetty and Kaymac Rotomoulders (Pty) Ltd* the arbitrator ruled in favour of the employee.<sup>72</sup> The employee was in charge of the safety critical department and was tested positive for drugs in random testing. The employer was aware of the employee's drug problem as the employee has confided in his superiors about his drug problem. He also asked the employee to assist him with his problem. The employee contended that the random drug testing was not coincidental and that the employer targeted him. He also mentioned that the employer did not assist him with his problem. The arbitrator ruled that the dismissal was substantively unfair.

In *Naik v Telkom SA* the employee was dismissed for being under the influence of alcohol.<sup>73</sup> The employee had been a heavy drinker for 17 years, but had no problems related to his work until 1998 when he was promoted to administrative officer. In 1998 he also admitted himself into a rehabilitation centre, but still suffered relapses. On a certain date he was under the

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<sup>71</sup> *SALSTAFF/AIWU on behalf of Govender v SA Airways* (2001) 22 ILJ 2366

<sup>72</sup> *Chetty and Kaymac Rotomoulders (Pty) Ltd* (2004) 25 ILJ 2391

<sup>73</sup> *Naik v Telkom SA* (2000) 21 ILJ 1266

influence of alcohol at work and threatened his manager with a panga. He received a final written warning for this. On a subsequent occasion he was to have an important meeting with management, but was intoxicated and passed out in his car. The arbitrator ruled that the employee had symptoms of alcoholism, which is a disease and should therefore be treated like any other disease, ie incapacity. The arbitrator found that the employee was dismissed for misconduct whilst his problem is that of incapacity. The correct procedure for dealing with incapacity has not been followed and the arbitrator ruled that the employee's dismissal was substantively unfair as the employer did not consider the following: 1. the nature of the job, 2. The extent to which the illness incapacitated the employee, 3. The length of time that the employee would have been away from work for rehabilitation and 4. The possibility of securing a temporary replacement.

In this case the arbitrator leaned heavily on the fact that alcoholism is a disease and as such the employee such have been managed as an incapacity case with the resultants steps that need to be followed.

In *Transnet Freight Rail v Transnet Bargaining Council* the court made a very clear distinction between dismissal due to alcohol abuse (misconduct) and alcoholism (incapacity).<sup>74</sup> The facts in this case were an employee who worked as a yard official who involves marshalling and coupling of trains which in fact is a safety position. The employee came to work under the influence of alcohol and was dismissed due to this being a serious offence according to the company's policy. The employee still had valid written warnings for similar offences committed. The court ruled that alcoholism is a disease that would lead to incapacity due to illness and must be treated as such. Where the employee is not an alcoholic, being under the influence of alcohol would be considered as misconduct and the appropriate disciplinary steps can then be taken against the employee. In this case the matter of 'under the influence of alcohol' was considered to be misconduct as the

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<sup>74</sup> *Transnet Freight Rail v Transnet Bargaining Council* (2011) JOL 26922 (LC)

employee has not been diagnosed with alcoholism and had previous similar offences with still valid written warnings.

In *Caerle Lead works (TVL) (Pty) Ltd v National Union of Metalworkers of SA* an employee was dismissed for reported on duty under the influence of alcohol.<sup>75</sup> The company had a policy which made “being under the influence of alcohol or drugs whilst on duty, or being consuming, selling these on the company property” a dismissible offence. In the hearing it has been found that the employer has not consistently applied this rule and the dismissal was ruled to be unfair. The employee was reinstated with the proviso that he go for eight weeks rehabilitation.

The CCMA and Bargaining Councils have applied the Code of Conduct: Dismissals when dealing with drug related offences. Again and again substantive and procedural fairness forms the cornerstone even when dealing with these kinds of matters like incapacity.

Although in none of the above cases absenteeism was a problem, the same principles would apply if an employee has an absenteeism problem due to drug dependency. Employers therefore need to understand and ensure that all the principles and guidelines of Acts and codes are followed when dealing with this problem. In the section on causes of absenteeism research has shown that alcohol abuse causes a three times increase in absenteeism. Employers should therefore be very cautious in how they apply their disciplinary codes as far as alcohol abuse is concerned. Case law is now very clear on how this matter should be dealt with.

### **5.3 Measuring absenteeism**

It is important that supervisors know the extent of the problem they are dealing with. Gut feeling will not help as absenteeism needs to be managed actively.

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<sup>75</sup> *Castle Lead Works (TVL) (Pty) Ltd v National Union of Metalworkers* (1989) 10 ILJ 776



There are a few ways which have been developed to measure absenteeism. Each one will be discussed briefly.

### 5.3.1 The Bradford Factor<sup>76</sup>

This formula was developed as a way of highlighting the inappropriate level of disruption on an organisation's performance that can be caused by short-term employee absence compared to incidences of prolonged absence.

The Bradford Factor is calculated as follows:

$B = SS \times D$  where:

S – the total number of spells (instances) of absence of an individual over a set period

D – the total number of days of absence of that individual over the same set period (the set period is typically set as a rolling 52 week period)

The Bradford Factor has been criticized in the following manner:

- Considered to be short sighted;
- Unlikely to be successful;
- Could lead to staff dissatisfaction and grievances;
- It does not take into account the type of absence.<sup>76</sup>

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<sup>76</sup> *Measuring and managing absenteeism in the workplace.*

<http://www.ukessays.com/essays/management/measuring-and-managing-absenteeism-in-the-workplace-essay.php> [Accessed 12/01/2013]

### 5.3.2 Absenteeism rate<sup>77</sup>

The rate of absenteeism is calculated by the total number of available working days lost through absence in any given period by the total number of available working days in that same period.

Absenteeism rate = Number of lost working days due to absence / (number of employees) X (Number of workdays) X 100

For example:

a. Average number of employees in work force	100
b. Number of available workdays during period	20
c. Total number of available workdays (axb)	2000
d. Total number of lost days due to absences during period	93
e. Absenteeism per cent (d[divided] c) X 100	4.65%

From scanning the literature this seems to be the most common formula used to determine absenteeism rates in the workplace.

### 5.3.3 Absence frequency rate<sup>78</sup>

This describes the incidence or number of absences, regardless of their duration, commencing over a particular period, usually a year.

Number of absence spells (occasions)/week/month/year

The absence frequency rate is expressed as a ratio, and normally it is given per month, i.e. the absence incidents per person per month.

<sup>77</sup> Levine G – *Absenteeism - Causes and Cures*  
<http://koreamosiac.net/elp/extras/seniors/Absenteeism%20Causesand%20Cures.pdf>

[Accessed 12/01/2013]

<sup>78</sup> Footnote 41 pg 44

These two measures (absenteeism rate and absenteeism frequency rate) provide a useful summary description of both the extent and frequency of absence in organisations.

#### **5.3.4 Simple monitoring on an annual calendar (Annexure A)**

In large organisations there are different levels of supervision. Unfortunately absenteeism has to be monitored by the immediate level of supervision. One therefore does not want to make the measurement too sophisticated. It should be user friendly for all supervisors to be used. Keeping a calendar by the supervisor is also an action at the first supervisory level; this in a sense put the responsibility directly on the shoulders of the first supervisor.

Studying the calendar, it is relatively easy to spot when there is an absenteeism problem. It is also very easy to pick up patterns of absenteeism. This document can also be used effectively when the supervisor engages with the employee showing him/her what his/her absenteeism patterns look like.

In sections where one supervisor has large numbers of staff it is not advisable to keep such a calendar for every staff member, but only the ones where there is an absenteeism problem.

#### **5.4 The Responsibility of the Supervisor**

Yorges highlighted the actions that supervisors need to take to manage absenteeism:<sup>79</sup>

- Ensure that all employees are fully aware of the organization's policies and procedures for dealing with absences;

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<sup>79</sup> Yorges S, *The role of the Supervisor in Managing Absenteeism*, [http://humanresources.about.com/od/laborrelations/a/manage\\_absences.htm](http://humanresources.about.com/od/laborrelations/a/manage_absences.htm) [Accessed 12/01/2013]

- Be the first point of contact when an employee phones in sick;
- Maintain appropriately detailed, accurate, and up to date absence records for their staff;
- Identify any patterns or trends of absences which cause concern
- Conduct return-to-work interviews;
- Implement disciplinary procedures where necessary.

In addition to the above the supervisor must ensure that the work is appropriately covered in the absence of the employee.

If the above measures are followed by the supervisor whenever necessary, it stands to reason that absenteeism will be reduced in the workplace.

It is also incumbent on the supervisor to take immediate disciplinary action when necessary. This will establish a culture that unscheduled absenteeism will not be tolerated in the work place. It will also encourage employees to use their leave especially sick leave judiciously.

### **5.5 Training of supervisors on the matter pertaining to absenteeism**

*Levine* stresses this point quite substantively.<sup>77</sup> It is also my experience that very few low level supervisors in the Public Sector are well equipped to manage absenteeism. In fact every new supervisor should get mandatory training in managing absenteeism, since absenteeism is an issue that virtually every supervisor will encounter at one or another stage. Equipping supervisors to manage this complex matter at times are crucial for the wellbeing of the institution as well as the employees that render services.

It is also advisable that managers be trained in Labour Relations for supervisors. This will not only assist them in managing absenteeism, but also any other labour related matter eg discipline etc.

## 5.6 Absenteeism Policy

This may sound strange, but many employers do not have an absenteeism policy. They do, however, have a leave policy spelling out the different kinds of leave employees are allowed to take.

If the company does not have a formal absenteeism policy, it is time that such a policy is developed as a matter of urgency. If the company does have a leave policy, but absenteeism rates are still high, it can only be one of two reasons 1. The policy is not effective, in this case the policy needs to be revisited and adjusted to make it more effective, 2. The managers/supervisors are not implementing the policy as it should be or supervisors are not skilled in managing absenteeism.

The policy should be clear and understandable to all managers/supervisors. It is no use to have a policy that is ambiguous and not clear to those who should be using it. It may be necessary to update the absenteeism policy as laws are amended or as other policies affecting the absenteeism policy is changing.

The policy also needs to be communicated widely to all the employees. Institutions also need to make sure that employees understand what the policy says.

## 5.7 Employment Assistance Programme (EAP)

In a study done by Yende, she has explained EAP in the following manner:<sup>80</sup>

E = employees (all, not some) who experience work related problems

A = assistance, in terms of counselling, training, development and referrals

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<sup>80</sup> Yende MP, *Thesis for Master in Business*, 2005, University of Johannesburg. pg 36

P = Programme, and this involves activities used for intervention.

She has intimated that through an effective EAP the rate of absenteeism will come down.

In a three year longitudinal study *Petch et al* have found that, for employees who utilized EAP services in year one, their absenteeism rates were higher in that year but decreased in subsequent years. They found a similar trend for those utilizing the EAP in year two.<sup>81</sup>

In an article published on the *Benefits* website it is stated: 'If five per cent of your employees used the EAP the potential monetary savings would be 3.45 per cent of the payroll for reduced absenteeism and improved productivity from problem employees.'<sup>82</sup>

*Orren et al* has done a study on the impact that EAP has at a SA bank.<sup>83</sup> Not surprisingly they found that managers confirmed a strong improvement (43 per cent and 50 per cent respectively) in rectifying the phenomenon of absenteeism and arriving late for work!

When the supervisor feels that he/she is at wits end with the employee, it's time to refer the employee to the EAP. This is especially the case when employees have periods of absenteeism due to drug abuse or alcohol abuse. In the Public Service there are EAP structures eg ICAS that render a professional service to both the employer (manager) and the employee.

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<sup>81</sup> Spetch A, Howland A, and Lowman RL. *EAP Utilization Patterns And Employee Absenteeism: Results Of An Empirical, 3-Year Longitudinal Study In A National Canadian Retail Corporation*, Consulting Psychology Journal: Practice and Research, 2011, Vol. 63, No. 2, 110–128

<sup>82</sup> *Employee Assistance Programme, Cost benefit analysis*. 2000.  
<http://www.benefits.org/interface/benefit/eap2.htm> [Accessed 19/01/2013]

<sup>83</sup> Orren C and Terblanche L, *An Impact and Cost-Benefit Analysis of an Employee Assistance Programme at a South African Bank*.  
[http://repository.up.ac.za/bitstream/handle/2263/14337/Orren\\_Impact\(2009\).pdf?sequence=1](http://repository.up.ac.za/bitstream/handle/2263/14337/Orren_Impact(2009).pdf?sequence=1) [Accessed 19/01/2013]

Managers should not try and resolve every matter regarding their subordinates. Some of the matters are best left in the hands of professionals. In a report of ICAS the following were reported and dealt with by ICAS:<sup>84</sup> relationship Issues, legal Issues, money management, stress, depression, information and resources, organisational Issues, trauma, child and family care, addictive behaviours, anxiety disorders, discrimination/harassment, human resource issues, loss issues, health and lifestyle, HIV, abuse, suicide, mental illness/psychiatric and relocation.

The list is quite extensive but it can be noted that many of the issues already discussed in this study are listed. We do not have information on the impact that the ICAS sessions with staff have on absenteeism, but I'm sure it must have an impact taking into account the findings above.

It is therefore imperative for employers to get an EAP if they haven't done so yet, the benefits not only on absenteeism, but also on productivity are there to see from the literature.

### **5.8 Absenteeism Management is part of Key Performance Areas (KPA) for Human Resources**

Most employers have performance agreements with their managers. It is recommended by *HR Future* that absenteeism management is specifically included as a KPA in the Human Resource Management.<sup>85</sup> It will then be a focal point for the manager/supervisor in which he/she will be assessed on a quarterly basis. This is a good idea that managers are held accountable for the absenteeism of their subordinates; this means that managers must actively manage absenteeism. Employees will also be aware of absenteeism as it is now actively managed.

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<sup>84</sup> Western Cape Department of Health: ICAS Quarterly EHWP Engagement Report 01/04/2009 to 30/06/2009

<sup>85</sup> HR Future, *Control your absenteeism*. <http://www.hrfuture.net/management-leadership/control-your-absenteeism.php?Itemid=267> [Accessed 19/01/2013]

## 5.9 Attendance oriented culture<sup>86</sup>

*Josias* is advocating strongly for 'organisations to have policies in place that create a work environment where employees want to work in, including flexible working arrangements and rewards for good attendance, as such policies have been found to reduce sickness absence'

This is to be supported strongly as it will create an environment where people want to come to work eg a gym at work, clean and neat working environment, regular updating of equipment etc. The cost incurred on creating this environment will be offset by the savings made on absenteeism.

## 5.10 Employee incentive programmes<sup>87</sup>

*Josias* again quote various authors in a strong plea for incentives programmes. This idea is supported. Employers need to be creative in developing these incentives. It is important that the employer involves the labour unions and the employees from the outset to get there buy in and co-operation.

Employers also need to be very careful in the development of these incentives as employees are normally very cynical about these awards eg merit awards.

*Josias* quoted *Koen-Muller* (2005) who made the following points as crucial for the success of any incentive programme: <sup>87</sup>

- Employers should communicate the goals of the programme and the rewards for achieving those goals.
- Employees need to understand how the incentive programme can improve the absenteeism rate.
- Employees should be involved from the beginning so that the rewards can be relevant to them and

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<sup>86</sup> Footnote 15 pg 46

<sup>87</sup> Footnote 15 pg 49



- The success of the programme needs to be measured and monitored to determine whether there is a reduction in absenteeism levels and this needs to be shared with the employees.

What can be added here is also that absenteeism needs to be communicated to the employee on a regular basis so that they are informed on a continual basis.

### 5.11 Conclusion

Although the management of absenteeism can at times be very challenging, it is non-the-less a crucial part of getting absenteeism under control. The literature has given some very interesting pointers on the management of absenteeism.

It was noted from the case law studies the importance of ensuring that processes are followed carefully to prevent arbitrators and Labour Court judges setting employer actions aside.

It has further been established that the manager/supervisor plays a vital role in getting absenteeism under control. It is also important that the manager knows what the policy regarding absenteeism is, knows how to manage it, knows all the labour processes involved, and if not *au fait* with it get training to equip him/herself to do it effectively. To assist the manager/supervisor the help of the EAP can be called upon for more professional help.

Attendance oriented culture and employee incentive programmes will also foster a love for the workplace and with a resultant decrease in absenteeism.

## Chapter 6

### The Role of Health Care Practitioners and Medical Certificates

#### 6.1 Introduction

Sick leave can be abused by employees. This would then contribute to high absenteeism rates. Many companies have sick leave policies and when employees need to provide proof of their incapacity. This proof is normally in the form of a medical certificate or a medical report supplied by a health care practitioner. The Health Care practitioner therefore also plays a crucial role in whether sick leave should be granted and for how long sick leave should be granted.

This chapter will elaborate on this matter and highlight what the problems are and how this could be rectified. Personal experience will also be used to highlight some of the problems experienced with medical certificates and the issuing of these documents to employees.

#### Scenario 1

A patient visited the doctor and made the following statement, 'Hi doc, I'm not really sick, but I need a medical certificate for two weeks. I had to go home (Transkei) to attend to some family matters'. The doctor responded by saying 'I can't give you a certificate as it amounts to fraud'. The patient responded by saying 'But doc you don't understand, I'm going to lose my job without the certificate'. The doctor responded by saying 'I will also lose my license to practise should I commit this fraudulent act.' The doctor refused to give the certificate and gave the patient his money back and asked that he leaves his practise.

The Labour Courts have also given direction on the medical certificate as a legal document. Case studies will be discussed to show the courts pronouncement on medical certificates.

## Scenario 2.

A patient phones the doctor with no medical problem but needs some days off for personal business. The patient gets to the receptionist and asks to speak to the doctor for a medical certificate. 'Hi doc I need a medical certificate' Doctor: 'What is your name and how many days do you want?' Patient: 'one week', doctor: No problem, you know how it works; you can collect the certificate from my receptionist and pay her.' The patient goes to the receptionist and gives his name for the certificate and pays the receptionist after which she hands over the envelope to him.

These are only two of many real life examples that can be given on the fraudulent abuse of sick leave.

## 6.2 Sick leave

Sick leave is dealt with in the Basic Conditions of Employment Act.<sup>49</sup> *Claasen* simplified it as follows:<sup>88</sup>

- Sick leave cycle is a period of 36 months employment with the same employer immediately following the commencement of employment or the completion of the prior sick leave cycle;
- At the end of every three year cycle, any sick leave remaining untaken or unused is forfeited;
- Absent on a Friday and a Monday is not 'consecutive days', it is two separate occasions; the employer cannot demand a medical certificate for the Friday and the Monday;
- If the employee is absent on three or more consecutive working days, or is absent on more than two occasions during the same eight week

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<sup>88</sup> Claassen A, *The South African Labour Guide*. <http://www.labourguide.co.za/conditions-of-employment/types-of-leave-437> [Accessed 19/01/2013]

period, then the employer is entitled to demand proof of incapacity (eight week rule);

- The proof of incapacity may take the form of a medical certificate issued and signed by a medical practitioner or any other health practitioner who is entitled to diagnose and treat patients and who is registered with a professional council established under an Act of Parliament.
- Medical certificates issued by Traditional Healers, Sangomas, “Witch Doctors” are not presently accepted.

It has been stated before that sick leave has increased by 397 per cent from 2000 to 2012.<sup>51</sup>

The first study conducted by the Public Service Commission (PSC) on sickness absence in the Public Service in 2002 revealed that sick leave data is unreliable due to different formula used for calculating sick leave averages and leave which is not captured.<sup>89</sup> Analysis of sick leave data by the Public Service Commission (2002) resulted in the following findings:

- The cost in the Public Service for sick leave amounts to R631,633,660;
- Uncaptured leave is estimated at R20 billion per annum;
- An average of 11.8 days sick leave per annum, per employee who took sick leave;
- 28 per cent of sick leave absence occurs on Mondays;
- high level of incidences where sick leave is taken before and after public holidays
- 91 364 (64 per cent) males and 40 118 (76 per cent) females took sick leave over the period;
- Total number of sick days taken by Public Servants amounts to 4343 612 and on average 11.86 days sick leave were taken per person;

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<sup>89</sup> Public Service Commission, 2002. *Sick leave trends in the Public Service*.

<http://www.psc.gov.za/docs/reports/2002/sick%20leave.pdf> [Accessed 19/01/2013]

- 107 per cent of public servants took more than 15 continuous days sick leave in the year under review.

In 2005 the Department of Public Service and Administration introduced the Policy and Procedure on Incapacity Leave and Ill-Health Retirement (PILIR). This policy had envisaged the following objectives:<sup>90</sup>

- reducing sick leave costs in departments;
- change people's mindsets with regards to the management of sick leave;
- prevent abuse of sick leave by managing incapacity or ill-health as far as possible

In a subsequent report by the Public Service Commission (2010) the following information was found:<sup>91</sup>

- employees are absent on sick leave on Mondays and this practice has not changed even post PILIR;
- Many managers are not managing the absenteeism of employees whose Temporary/Permanent Incapacity Leave applications have been declined;
- the implementation of PILIR has been somewhat effective in reducing sick leave days taken in the provinces;
- A total of 2 029 336 sick leave episodes occurred among female employees post PILIR compared to the 2 024 942 episodes pre PILIR. Thus 4394 more sick leave episodes occurred among female employees after the implementation of PILIR;

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<sup>90</sup> Department of Public Service and Administration. *Policy and Procedure On Incapacity Leave and Ill-Health Retirement*, 2005  
<http://www.dpsa.gov.za/dpsa2g/documents/cos/2005/PILIR.pdf> [Accessed 20/01/2013]

<sup>91</sup> Public Service Commission. *Evaluation of the Impact of the Policy and Procedure on Incapacity Leave and Ill-Health Retirement (PILIR) on Sick Leave Trends in the Public Service*. 2010.  
[http://www.psc.gov.za/documents/2011/EVALUATION%20OF%20THE%20IMPACT%20OF%20THE%20POLICY%20AND%20PROCEDURE%20ON%20INCAPACITY%20LEAVE%20AND%20ILL-HEALTH%20RETIREMENT%20\(PILIR\)%20ON%20SICK%20LEAVE%20TRENDS%20IN%20THE%20PUBLIC%20SERVICE.pdf](http://www.psc.gov.za/documents/2011/EVALUATION%20OF%20THE%20IMPACT%20OF%20THE%20POLICY%20AND%20PROCEDURE%20ON%20INCAPACITY%20LEAVE%20AND%20ILL-HEALTH%20RETIREMENT%20(PILIR)%20ON%20SICK%20LEAVE%20TRENDS%20IN%20THE%20PUBLIC%20SERVICE.pdf) [Accessed 20/01/2013]

- The Public Service has a long way to go in reducing the rate of absenteeism, and managing the abuse of sick leave
- PILIR has thus far not made a significant difference in the cost that the State is incurring for the number of sick leave days taken.

From the above information it is very clear that the battle to turn around sick leave abuse is still a long way off. Employers will have to renew their zeal to tackle this problem.

In managing sick leave the question could be asked, when would I know that sick leave is genuine? In managing sick leave with the guiding principles given in Chapter 5, the manager will become more comfortable in managing the problem cases by applying some very basic principles. The manager cannot go against a valid medical certificate, if the manager is questioning the certificate, he/she must have very good reason to do so and it must be stated in writing.

### 6.3 The Medical Certificate

*Masermule* makes the point the administration of medical certificates should be improved.<sup>92</sup>

From the two scenarios above one need to develop a good dose of cynicism about medical certificates. *Evershed* has reported that it has been established that some medical practitioners collude with employees by issuing medical certificates in circumstances when an employee is not sick.<sup>93</sup>

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<sup>92</sup> Masermule. *Combating absenteeism in the workplace*.  
[http://www.masconsulting.co.za/uploads/news/2004-Combating\\_abseteeism\\_in\\_the\\_workplace.pdf](http://www.masconsulting.co.za/uploads/news/2004-Combating_abseteeism_in_the_workplace.pdf) [Accessed 12/01/2013]

<sup>93</sup> Eversheds. *The sick note*.  
<http://www.eversheds.com/global/en/what/articles/index.page?ArticleID=en/global/South-africa/The-sick-note>. [Accessed 20/01/2013]

According to the ethical and professional rules of the Medical and Dental Professions Board the following information should be on a certificate to be valid:<sup>94</sup>

1. A practitioner shall only grant a certificate of illness if such certificates contains the following information namely-
  - a) The name, address and qualification of the practitioner;
  - b) The name of the patient;
  - c) The employment number of the patient (if applicable);
  - d) The date and time of the examination;
  - e) Whether the certificate is being issued as a result of personal observations by the practitioner during an examination, or as the result of information received from the patient and which is based on acceptable medical grounds;
  - f) A description of the illness, disorder or malady in layman's terminology with the informed consent of the patient. Provided that if the patient is not prepared to give such consent, the medical practitioner or dentist shall merely specify that, in his or her opinion based on an examination of the patient, the patient is unfit to work;
  - g) Whether the patient is totally indisposed for duty or whether the patient is able to perform less strenuous duties in the work situation;
  - h) The exact period of recommended sick leave;
  - i) The date of issuing the certificate of illness;
  - j) A clear indication of the identity of the practitioner who issued the certificate which shall be personally and originally signed by him or her next to his or her initials and surname in printed or block letters.
2. If preprinted stationery is used, a practitioner shall delete words which are irrelevant;

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<sup>94</sup> Health Professions Council of South Africa, *Guidelines for good practise in Medicine, Dentistry and the Medical Sciences*. Ethical and professional rules of the Medical and Dental Professions Board. 2002. Rule 15

3. A practitioner shall issue a brief factual report to a patient where such a patient requires information concerning him or her.

Section 23 of the BCEA deals with proof of incapacity:<sup>95</sup>

*'23. (1) An employer is not required to pay an employee in terms of Section 22 if the employee has been absent from work for more than two consecutive days or on more than two occasions during an eight-week period and on request by the employer, does not produce a medical certificate stating that the employee was unable to work for the duration of the employee's absence on account of sickness or injury.*

*(2) The medical certificate must be issued and signed by a medical practitioner or any other person who is certified to diagnose and treat patients and who is registered with a professional council established by Parliament.*

*(3) If it is not reasonable practicable for an employee who lives on the employer's premises to obtain a medical certificate, the employer may not withhold payment in terms of subsection (1) unless the employer provides reasonable assistance to the employee to obtain the certificate.'*

From this section of the Act it is clear that there are two requirements in order for a medical certificate to be a valid medical certificate; it must state that the employee was unable to perform his or her normal duties as a result of illness (or an injury) and must be based on the professional opinion of the medical practitioner.<sup>96</sup>

### **6.3.1 When can employers question medical certificates?**

According to *Claasens et al*, when the following is apparent:<sup>96</sup>

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<sup>95</sup> Footnote 51 Section 23

<sup>96</sup> Claasen A and Du Toit J. *The BCEA and Medical Certificates. The South African Labour Guide*. <http://www.labourguide.co.za/most-recent-publications/medical-certificates-what-constitutes-a-valid-medical-certificate> [Accessed 20/01/2013]



- When the diagnosis is “wide an vague”;
- When ailment is stated as “medical condition”;
- When ailment is stated as “illness”
- When the handwriting is illegible;
- When there is clear tampering on the certificate especially when dates are altered eg recommended dates are 1 – 3 March, but it is stated as 1 – 13 March and the colour of the pen in 1 of 13 is different.

### **6.3.2 When can employers insist on the production of a medical certificate?**

- When three or more days of sick leave is applied for;<sup>97</sup>
- When the eight week rule applies;<sup>89</sup>
- When there is sick leave abuse and the supervisor has asked for a medical certificate.
- When the employee applies for temporary or permanent incapacity.<sup>82</sup>
- When the employee applies for Ill Health Retirement<sup>82</sup>

### **6.3.3 When can an employer insist on a diagnosis on the medical certificate?**

- When there is sick leave abuse and the supervisor has asked for the diagnosis to be on the medical certificate.
- When an employee applies for Temporary Incapacity (Pilir).<sup>88</sup>
- When an employee applies for Ill-Health Retirement (Pilir).<sup>88</sup>

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<sup>97</sup> Footnote 51 Section 23

### **6.3.4 Is the current medical certificate sufficient to prevent sick leave abuse?**

The answer is clearly not as it was shown how easy it is to provide a fraudulent certificate. Scenario 3 will illuminate this.

#### Scenario 3

An employer is concerned about the high rate of sick leave taken by its employees. The employer also noted that the medical certificates come from the same practitioner. The employer decided to set a “trap” for the practitioner and sent one of their managers as a patient to the practitioner. On arrival at the practise the manager makes it very clear that he is not ill but merely wants a medical certificate for a few days. He receives it without any trouble and pay for the consultation. With this he went back to his place of work and the next day another manager phones the doctor and informs him of fraudulent medical certificates issued by him. The practitioner became furious and told the person that he can do what he likes. Needless to say the practitioner was reported to the appropriate council.

The above true story just shows how easy it is for any practitioner to issue a fraudulent medical certificate. The majority of practitioners are doing their business in an honest fashion, but there are unscrupulous practitioners that need to be stopped. There should definitely be a bigger onus on the practitioner to recommend sick leave.

An example would suffice. If for example some employee has a minor sprain of the ankle the practitioner may recommend leave for injury of for example three days for the ankle to rest and recover sufficiently so that the employee can resume his/her duties. There should be a duty on the practitioner to

enquire precisely what work and duties the employee is performing. If for example the above employee is a messenger whose work it is to walk the major part of the day then it is reasonable that the employee would not be able to carry out his/her duties and the recommended sick leave is justified. If however the employee is a clerk whose work it is to sit behind a desk for the whole day, then it is not reasonable for this clerk to stay at home for three days.

The point made here is that the medical certificate should also indicate that the practitioner has interrogated the employee on the type of work he/she is doing and then based on that and his clinical judgement he/she recommends sick leave for the period stipulated. I believe medical certificates should be adapted to include this information. This would ensure that health practitioners clearly state on the certificate that the assessment of his/her patient includes a clinical assessment whether the patient is fit for the type of work he/she is performing.

### **6.3.5 Fraudulent medical certificates**

If the fraud is committed by the employee, this will be seen in a very serious light as gross dishonesty and the necessary disciplinary steps will follow after a substantive and fair process has been followed. If however the fraud has been committed by the practitioner the matter then needs to be reported to the appropriate professional council for handling.

## **6.4 Medical Certificates and the law**

Medical certificates are used by employees to 'proof' incapacity. It is also required by the employer once an employee is sick for three days or more. It

would therefore be sufficient for an employee to tender a valid medical certificate as proof of incapacity due to illness.

It is however a completely different matter when medical certificates are eg tendered as incapacity due to illness for a court case. In the case of *Mgobhozi v Naidoo NO & Others* the court made the following ruling regarding medical submitted to the court as evidence of incapacity to attend the court: '*Medical certificates in the absence of affidavits are regarded as hearsay and is therefore not admissible*'.<sup>98</sup>

In the case *Old Mutual Life Assurance v Gumbi* the court found against an employee who had produced a *vague medical certificate* which disclosed his illness as 'tension headaches' and 'enteritis'.<sup>99</sup> The court held that a standard form containing printed and hand written parts will not suffice as proof of an employee's sickness. There is however tension here between this court ruling, the Basic Conditions of Employment Act s23 (2), as well as the ethical and professional rules of the Medical and Dental Professions Board. Rule 15 permits pre-printed medical certificates, as well as what employers require when an employee is three days or more sick.<sup>94</sup>

My view is that we need further pronouncements by the courts to give clarity on these tensions. Legal principles also should bear in mind that there is doctor-client privilege which exists in law.

## **Conclusion**

From this section it is clear there are very clear guidelines concerning validity of medical certificates on the part of the Medical and Dental Professions Board. Supervisors need to be empowered to know these and act where necessary.

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<sup>98</sup> *Mgobhozi v Naidoo NO & Others* (2006) 27 ILJ 786 (LAC)

<sup>99</sup> *Old Mutual v Gumbi* (2007) SCA 52 (RSA)

Supervisors can insist on medical certificates or even a diagnosis under certain conditions. Again with this knowledge the supervisor would be in a much better position to manage the abuse of sick leave. This should be incorporated in the training on absenteeism.

A recommendation is also made on how to improve the medical certificate so as to try and reduce fraudulent activity on the part of the practitioner.

Fraudulent medical certificates should also be dealt with decisively, for employees with the necessary disciplinary steps and for the practitioner reporting the matter to the relevant professional body.

In the case of tendering medical certificates in a court of law as proof of incapacity due to illness, the court held that these are hearsay documents without affidavits and is therefore in-admissible.

## **Chapter 7**

### **Conclusion and summary**

Absenteeism was and still is a problem for any employer. The magnitude of the problem is not abating. In the Public Sector despite some very serious interventions, the problem is getting worse. When tackling absenteeism employers still do not always follow the correct and legitimate process and at times do not look carefully at exactly what the problem is eg an employee is dismissed in his absence due to incarceration. It has been shown that the Courts do not excuse wrong procedures or where there are no substantive reasons for dismissals the Courts ruled against employers.

The other problem that land employers in hot water in the courts is they sometimes do not have policies that govern absenteeism, or if they do have policies, their supervisors do not follow these policies with the result inconsistencies arise and cases will fail in the Labour Court. Because many of these cases land up in a Labour Court it is important to understand precisely what is meant by absenteeism. Employers should rather use the legal definitions of absenteeism as these will be used by the Courts from the various case laws.

To be able to manage absenteeism effectively supervisors must understand and know the possible causes of absenteeism to effectively address the problem. Surely a process of counselling has to be embarked upon in managing the problem. This is especially important because of the complexity of some of the causes and also that they may be dealt with differently. Employers may call in the help of employment assistance programmes to address the problem of absenteeism. Employers should not underestimate the value of these programmes.

It has been shown that absenteeism is costly not only in terms of staff costs, but also productivity. The loss of productivity can be direct and indirect.

Managing absenteeism is probably the most critical element in addressing the problem. Many absenteeism levels are where they are, precisely because the problem is not managed. Here the problem may be more pronounced at the lower level supervisor. Managers need to understand that absenteeism needs to be managed within the boundaries of the law. Case law illustrated has shown clearly where the loopholes are and managers should learn from this when they manage absenteeism. Training as far as the policy of the company and legal aspects of absenteeism becomes paramount in tackling the problem of absenteeism. One can only manage a problem if one knows what the problem is and what the magnitude of the problem is. Measuring tools have been put forward and should be used in

the workplace as this will be a wakeup call for managers to actually see the problem and its size.

Positive reinforcement and programmes should form part of the employer's arsenal to address the problem. Workers should be positively encouraged about being present at work and rendering services to the employers.

The question of sick leave abuse is a particularly sensitive one. This is because the employee can manipulate his or her health care practitioners. On the other hand health care practitioners should keep to the Hippocratic oath and be honourable when issuing medical certificates. It has been shown how easily medical certificates can be issued by health care practitioners and this is of particular concern as this would have a direct effect on absenteeism. It is therefore recommended that there need to be a relook at the guidelines for medical certificates by the Medical and Dental Professions Board. There also need to be more clarity on the validity of a medical certificate in the South African court of law as well as a disciplinary hearing. There is tension at the moment between the pronouncements of the courts and the guidelines of the Medical and Dental Professions Board regarding the format of the medical certificated.





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**NAME OF THE INSTITUTION****Annexure A****LEAVE RECORD****2010**

Name and Surname :

Staff No. :

Rank :

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**AL – ANNUAL LEAVE****NSL – NORMAL SICK LEAVE****TDL – TEMPORARY DISABILITY LEAVE****FRL – FAM. RESPN. LEAVE****LOI – LEAVE OCCUP. INJURY****ADL – ADOPTION LEAVE****UL – UNPAID LEAVE****SL – SPECIAL LEAVE****LU – LEAVE: UNION OFF. BEARERS****ML – MATERNITY LEAVE****DO – DAY OFF**