

# FACTSHEET: SICK LEAVE

This factsheet, part of the employee leave section of the Employers' Guidebook gives more detail on sick leave and the legal requirements of employers to pay their employees sick leave under Vanuatu law.

## 1. WHAT IS THE MAIN LAW COVERING SICK LEAVE?

Section 34 of the Employment Act [Cap 160] (the Act) provides the law on annual leave entitlements for employees. Section 34 of the Act was amended in 2008 and 2009.

This means the Act has changed since it was last consolidated and published in 2006. An unofficial update of section 34 can be found in the *tools* section of this chapter.

## 2. ARE ALL EMPLOYEES ELIGIBLE TO CLAIM SICK LEAVE?

Sick leave must be given to employees who have been in *continuous employment* for more than 6 months (section 34(1)).

**GREY AREA:** The Act does not define what continuous employment means for the purposes of sick leave. As a result the definition used in respect of defining continuous employment for annual leave is probably used. As discussed further in the *factsheet: annual leave* "continuous employment" has been defined by the court as working more than 22 days a month. The other option for defining continuous employment comes from section 54(2)(a). This section defines continuous employment for the purposes of determining eligibility for severance allowance as requiring the employee to work 4 or more days per week.

In practice many employers interpret continuous employment to mean workings 4 or more days per week and do not "count" the number of days per month an employee works.

## 3. HOW MUCH LEAVE MUST I GIVE MY EMPLOYEES?

The amount of leave that can be claimed is 21 working days per year (section 34(1)).

**NB** This is the *minimum* amount of sick leave. Employers can voluntarily choose to give more sick leave if they want to. If additional sick leave is given by the employer then the employment contract should clearly state the conditions under which additional sick leave can be taken and whether additional sick leave is paid or unpaid.

*Jenny has taken 10 days sick leave this year with the agreement of Bizniz to look after her sick child. She now has dengue fever and has a doctor's certificate to be off work for 15 days. Does Bizniz need to pay her for these 15 days?*

The annual sick leave entitlement is 21 days. Jenny has already used 10 days sick leave. She is entitled to a further 11 days of paid sick leave. Bizniz does not need to pay Jenny for the additional 4 days that she has a medical certificate for. Jenny should be entitled to take unpaid leave, or, if she wants to, could use some of her annual leave to cover these additional days.

Note: there is nothing in the law which requires you to allow a staff member to take sick leave in order to look after a sick dependent. Many employers do allow employees to take either paid or unpaid sick leave for this purpose, however. Your position on this is something that you may want to include in your employment contracts.

#### **4. HOW MUCH DO I HAVE TO PAY MY EMPLOYEES WHILE THEY ARE ON SICK LEAVE?**

The amount of payment that must be given to the employee whilst he or she is on sick leave is the employee's usual salary or wage (section 34(1)).

#### **5. WHAT MEDICAL CERTIFICATION MUST AN EMPLOYEE PROVIDE IN ORDER TO BE ELIGIBLE FOR PAID SICK LEAVE?**

Under the Act employees based in Port Vila and Luganville must provide a medical certificate if they are sick for more than 2 days (section 34(2)(a)). Employees based elsewhere must provide a medical certificate if they are sick for more than 4 days (section 34(2)(b)).

Some employers are concerned that the law allows employees to take a certain amount of uncertified sick leave. It is possible to put a clause in your contract requiring all sick leave to be supported by a medical certificate (see *Chapter 2: Employment Contracts*). The employer will then become responsible for medical certificate costs.

**GREY AREA:** It is not clear in law whether the medical certificate must be from a doctor, or whether a medical certificate from a local clinic is acceptable. The Employment Act does not contain a definitions section. It can be observed that the Public Health Act does define a medical practitioner as a licensed doctor. If you require a medical certificate from a doctor (or from a particular doctor) then it is suggested that you specify this in your employment contract.

#### **6. HOW QUICKLY MUST AN EMPLOYEE INFORM AN EMPLOYER IF HE OR SHE IS SICK AND UNABLE TO WORK?**

The law requires employees to inform employers as soon as practicable if they are going to be absent due to sickness (section 34(2)).

It is recommended that employers include a clause in all employment contracts about the exact procedures employees should use to notify employers if they are going to be absent due to sickness as this reduces opportunities for unexplained absences.

*Albert works for Bizniz. He did not come to work on Tuesday. Nor did he contact anyone at Bizniz. He told his manager he had been sick when he came to work on Wednesday. He is now asking to be paid a day's sick leave. Does Bizniz have to pay him?*

Unless there is something specific in the employment contract about notification of sickness, Bizniz does have to pay him.

An employer can instruct staff to text or call in sick by a certain time if they are to be absent. If they do not do so then it may be treated as a day's unpaid leave, unless there was a specific reason why it would not have been practical to comply with notification requirements in a particular circumstance. This type of instruction needs to be communicated in writing to all Bizniz staff and preferably included in individual employment contracts.

#### **7. IF I THINK THAT MY EMPLOYEE IS NOT REALLY SICK CAN I REQUIRE HIM OR HER TO BE EXAMINED BY A DOCTOR?**

The employer may require an employee who is absent from work on grounds of illness to be examined by a doctor of the employers choice (section 34(4)). Employers can also require employees who have provided medical certificates to undergo a second examination with a doctor of the employer's choice (section 34(3A)). If an employer requires an employee to have a medical examination then the employer must bear the cost of this medical examination.

*Pita works full time in Port Vila has already taken over 10 single days of sick leave since January and it is only early May! These sick days often coincide with the Mondays after pay days. The law requires Pita to produce a doctor's certificate after two days but can Bizniz request a certificate due to the number of sick days he has been taking?*

You Bizniz is entitled to require Pita to be examined by a doctor at its own expense. If the examination indicates that Pita has not been sick this may be grounds for dismissal – see *factsheet: termination for employee misconduct*.

In the future Bizniz might also want to include a clause, in all its employment contracts, about requirements as to notifications of illness and medical certificates.

As a human resources management issue Bizniz should sit down with Pita and discuss with him the reasons for his absence to see what may be the problem.

#### **8. IF AN EMPLOYEE DOES NOT USE ALL OF HIS OR HER SICK LEAVE IN ONE YEAR DOES IT ACCUMULATE TO THE NEXT YEAR?**

Unused sick leave does not accumulate. It should not be viewed as a holiday entitlement, but is only provided when there is a medical reason for being absent from work.

## **9. WHAT HAPPENS TO UNUSED SICK LEAVE WHEN AN EMPLOYEE LEAVES?**

Sick leave is only to be used if a person is sick. As such “unused sick leave” cannot be claimed as a payment when an employee leaves.

## **10. WHAT OTHER OBLIGATIONS DO I HAVE IN RESPECT OF KEEPING MY EMPLOYEES HEALTHY?**

The Employers’ Guidebook does not cover health and safety law – although if requested a later edition may cover this topic. The Employment Act does require employers to provide safe working conditions and some first aid material (Part 9). It also requires employers to provide sanitary facilities, including drinking water (section 13).

Employers should also remember that it is in their best interests to encourage their employees to be healthy. This might include simple measures such as posters about hand-washing in bathrooms and food safety posters in staff tea rooms. It might also include passing on government health messages. Some employers also encourage employees to be physically fit and active. Whilst these measures go beyond the narrow employment relationship, a decent employer should encourage a healthy happy workplace.

## **11. WHAT RECORDS DO I NEED TO KEEP ABOUT SICK LEAVE?**

There are no laws that require you to keep leave records. However good employers should keep records of leave because records:

- help you to make sure that you are providing leave in accordance with the law;
- help you to manage human resources by identifying staff who are frequently absent due to sickness; and
- allow you to check that employees are not abusing leave provisions by taking too much leave.

A simple form for recording sick leave is included in the *tools* section of this chapter.