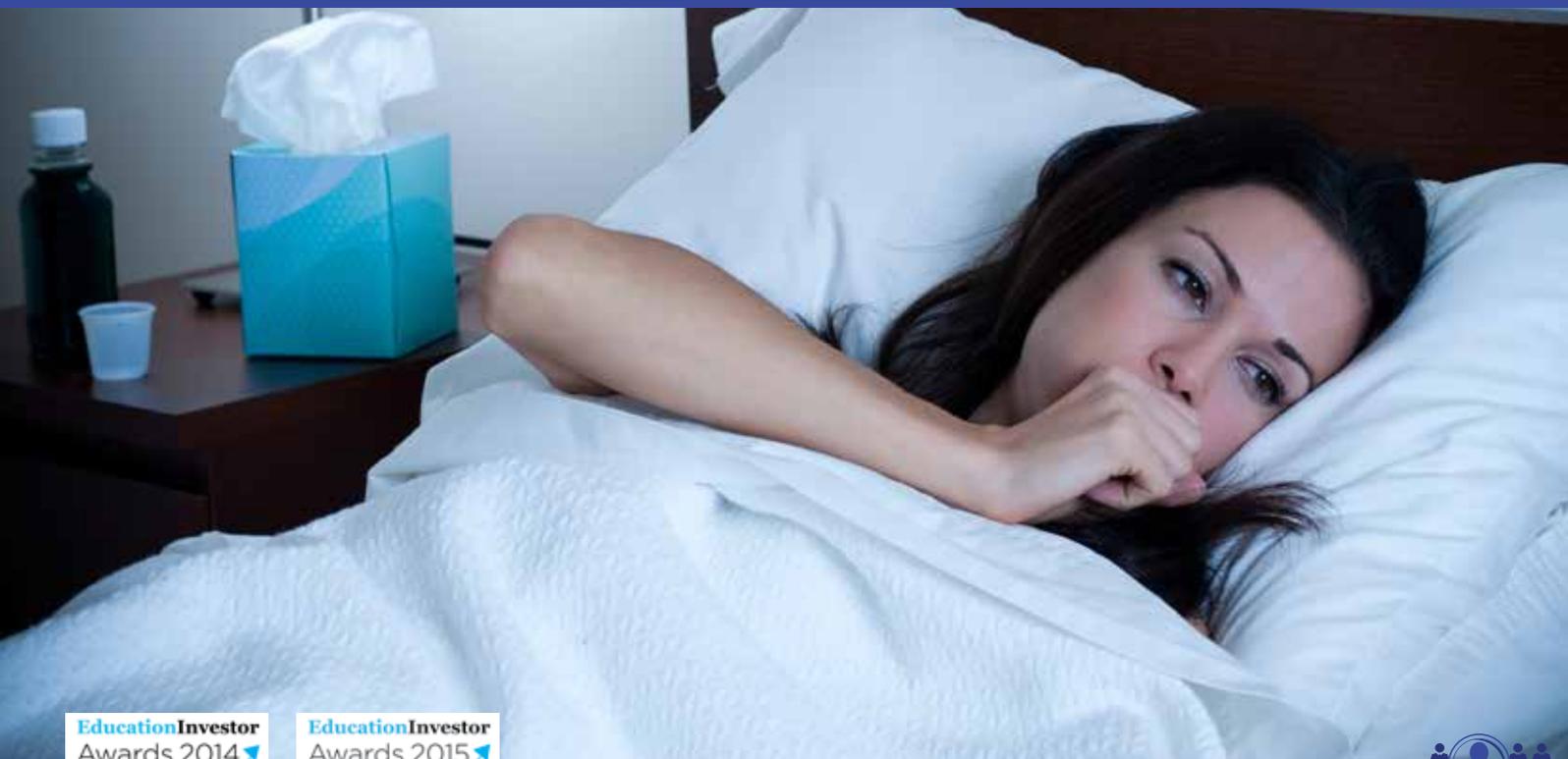


Long Term Sickness in School Establishments

What you need to know



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Long Term Sickness

Long term sickness of staff can cause huge problems for a school. It can be very costly due to long sick pay provisions, can disrupt effective teaching, and cause administrative headaches, and can be very difficult to manage.

Generally speaking school staff have relatively generous sick pay provisions, over and above Statutory Sick Pay (SSP). This can be up to 6 months full pay, followed by 6 months half pay.

It is a common myth that school staff who are absent from work due to long term sickness cannot be managed until sick pay has been exhausted. However, this is rarely the case.

Fit Note

A staff member who is off work due to long term sickness will need to submit a “Fit Note” from their GP. This will certify them as unfit to work, and explain the reasons why. It will also state how long the fit note is to last for. Staff should be made aware that a failure to submit Fit Notes may have an impact on their receipt of sick pay.

Sometimes Fit Notes can be sparse, and unhelpful. The Fit Note may not relate the specific medical condition and its effect on the ability to work.

If you are not satisfied with the contents of a Fit Note you may consider obtaining medical evidence from elsewhere. What may be more helpful is an independent referral to an Occupational Health specialist. This often gives a more detailed insight into the reasons for the staff member’s long term absence.

Occupational Health referral

Long term sickness can trigger, and be better managed through an Occupational Health referral. School leaders ought to check their own internal procedures for the particular timing and method of an Occupational Health referral.

An Occupational Health referral is an independent medical assessment of the unfit staff member which can establish the reason for their absence, the impact on their ability to do their job and the long term prognosis. It can also identify if there are any reasonable adjustments which can be made in order to facilitate their return to work (see Disability Discrimination further on below).

Provided there are no limits in a school's own absence management policy a referral can be made at any point during the staff member's long term absence.

A private Occupational Health referral can either be done by way of independent Occupational Health assessments (costing in the region of £500) or through the free Fit for Work scheme (<http://fitforwork.org/>). Please note that in addition to the above, some maintained schools may still be able to utilise the Local Authority Occupational Health provider.

In some cases, particularly where the reason for absence is due to an unusual medical condition, there may be a need to refer the staff member to a specialist medical expert for advice.

School leaders can ask careful and considered questions to the Occupational Health provider. They can include:

- What (if any) risk assessments need to be taken to ensure health and safety;
- What is the reason for the long term absence;
- How long is the absence likely to last for;
- If the long term absence is due to an underlying disability; and
- If there are any reasonable adjustments which can be put in place to help the staff member get back to work more quickly.

School leaders may find it easier to manage long term sickness absence when they have a report from Occupational Health because they will usually give a more detailed picture.

However, it is important to bear in mind that the more thorough and precise the questions asked of the expert, the more useful the report is likely to be.

What if the person will not get better?

If the long term prognosis is that a person does not look like they will be “Fit” to work, then there may be little alternative than to dismiss on “capability” grounds.

Capability is a potentially fair reason for dismissal. In cases of long term sickness, the rationale for this will be that the person is no longer capable of doing their role for the foreseeable future (taking into account any reasonable adjustments and other medical evidence). A fair process will have to be undertaken in order to fairly terminate that person’s employment.

If a staff member’s employment is ended by reason of capability, the dismissal must be “with notice”. The calculation of notice pay will depend on the length of the staff member’s contractual notice but, in some cases, this could result in them being paid full pay during their notice period even where they have already exhausted their entitlement to sick pay. Please contact a member of the team for assistance with calculating notice pay.

Common difficulties

1. Supply staff (what about their rights?)

Schools are not expected to have to function indefinitely without the absent member of staff who is on long term sickness. Schools usually manage this either through use of supply staff or, in some cases, temporary employment. Some schools ‘buy in’ insurance cover for long term sickness absence.

However, caution must be exercised when recruiting and dispensing with temporary or supply staff. For the purposes of some employment law rights, continuous service is recognised from School to School. For example, employees gain the right to a redundancy payment after two years continuous service. If this has been obtained at the time the permanent member of staff returns, the school may need to consider whether there is a redundancy situation at that point.

2. Disability Discrimination

If the reason for long term sickness is due to a disability, the School will be under a duty to consider whether they could make any “reasonable adjustments” that would assist the staff member in their return to work. This may include a phased return, flexible working hours or a change to their working conditions. What is “reasonable” will depend on the circumstances and how the reason for absence relates to the staff member’s ability to do their job within the School.

An Occupational Health referral or a specialist medical report will help and allow the School to action any recommendations made (where reasonable). This will minimise the risk of a complaint from the member of staff that the School did not consider any reasonable adjustments.

Other options

Sometimes it is not possible to manage long term sickness in the most effective way. A member of staff may not be willing to cooperate with the process for example. In such circumstances schools may want to consider alternatives to their absence management process such as the use of a Settlement Agreement, redeployment or early ill health retirement.

If you have any queries about long term sickness issues or any other legal or HR issue please do not hesitate to contact a member of the Flint Bishop Education Team.

Legal Services Overview

Commercial Services:

Commercial Contracts:

- Agency & Distribution
- Bribery Act Compliance
- Data Protection
- IT & e-Commerce
- Intellectual Property
- Outsourcing & Supply Agreements
- Public Procurement
- Terms & Conditions

Commercial Property:

- Conditional Sale Agreements
- Development Agreements
- Joint Ventures (*as part of a wider team construction & public procurement*)
- Land Acquisition & Disposals (*including options*)
- Leases
- Planning / Section Agreements
- Profit Sharing / Overage Agreements
- Property Acquisition & Disposals
- Property Management

Construction & Engineering:

- Adjudication
- Alternative Dispute Resolution (ADR)
- Appointment Documents for Professional Consultants
- Arbitration
- Building Contracts
- Dispute Management
- Litigation
- Security Documentation

Corporate Finance:

- Acquisitions & Disposals
- Acquisitions Finance
- Buy-outs
- Company Secretarial Services
- Corporate Governance
- Joint Ventures
- Loan & Security Arrangements
- Partnerships
- Property Finance
- Reorganisation & Restructuring
- Shareholder Relations

Dispute Resolution / Debt:

- Commercial Contract Disputes
- Shareholder and Partnership Disputes
- Insurance Disputes
- Injunctions
- Professional Negligence
- Alternative Dispute Resolution
- Property Litigation
- Insolvency
- Debt Recovery

Licensing & Entertainment:

- Alcohol & Entertainment Licensing
- Betting & Gaming Licensing
- Regulatory Advice & Prosecutions
- Reviews & Enforcement
- Training

Employment Law & HR:

- Contracts and policies
- Disciplinary matters
- Sickness and absence
- Capability
- Redundancy / restructuring
- Unfair dismissal
- Discrimination
- Restrictive covenants / restraint of trade
- TUPE
- Settlement agreements

Private Client Services:

Family & Divorce Law:

- Divorce
- Financial Matters
- Children Issues
- Cohabitation
- Civil Partnerships
- Pre-nuptial Agreements

Residential Conveyancing:

- Buying / Selling Property
- Re-mortgaging
- Transfer of Equity
- Right to Buy
- Probate Sales

Wills, Probate, Tax & Trusts:

- Wills
- Probate
- Lasting Powers of Attorney
- Court of Protection
- Inheritance Tax Planning
- Trusts

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