



25.10.2016

## Serbia: How to Fight the Abuse of Sick Leave – Is There a Solution?



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*Large-scale industry employers in Serbia often face the problem of high absenteeism due to abuse of sick leave by employees.*

These cases repeat throughout the year and negatively affect the profitability of businesses. Employers, therefore, often wonder how this problem can be solved, and if legislation can offer a solution.

The abuse of sick leave appears in two forms: (i) When it is approved and used without medical justification (for example when an employee is not sick at all); and (ii) When the sick leave was used contrary to the reasons for which it was approved (for example when employees are working for another employer while on sick leave).

In principle, the Labor Act prescribes that an employee can be dismissed if he/she abuses the right to sick leave. However, before dismissal, the employer must prove that the employee was in fact abusing the right to sick leave.

July 2014 amendments to the Labor Act, were intended to include more flexibility for employers in proving the abuse of sick leave. Before the amendments to the Labor Act were adopted, the Act only regulated the procedure for proving the abuse of sick leave through the State Medical Institution (the "Official Procedure"). The Official Procedure is designed to allow a medical committee to reassess the first medical opinion in terms of which the sick leave was approved. Unfortunately, the Official Procedure in practice usually provides no results, and is therefore often avoided by employers.

Pursuant to the 2014 amendments of the Labor Act, however, employers in doubt as to whether sick leave was claimed without valid medical reasons can either: (i) refer the employees to a private medical institution for medical analysis in order to determine whether the employee abused his or her right to sick leave (at the employer's cost), or (ii) confirm the claimed sickness by a procedure regulated under the employer's internal policy. If an employee refuses to undergo the analysis in the private medical institution, he/she can be dismissed.

Although it seems that employers can easily solve the problem of abuse of sick leave by simply ordering employees to undergo medical analysis in private medical institutions, unfortunately the situation is not so simple.

The results of medical examinations in private medical institutions have been found to be more objective than the results of the Official Procedure, as the doctors in State Health Institutions tend to have an employee-friendly attitude. However, these results cannot be cited as grounds for termination of employment. In fact, a private medical institution can only perform a particular medical analysis (e.g., blood test, x-ray, or similar procedures), and the results can then be used in the Official Procedure. Thus, the possibility of having a particular analysis in a private medical institution is not beneficial for employers, and instead the burdensome and time-consuming Official Procedure still needs to be completed, with results from analysis able only to be used as additional evidence.

On the other hand, employers are in a position to regulate their own internal procedures for investigating the abuse of sick leave. Such procedures can be performed by members of a special committee who can in principle visit the employee at his/her home in order to confirm whether he/she is acting in accordance with the doctor's advice (e.g., if an employee with a broken leg actually has a cast on his/her leg).

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However, only in rare cases can the committee's report be the sole ground for termination of employment. For instance, if the committee confirms that a sick employee is out walking the streets instead of resting at home, this cannot be taken to be firm evidence, as the medical authority would need to confirm whether such behavior could have a negative impact on his/her recovery.

On the other hand, if the employer's committee caught an employee working for another employer this could be used as evidence against the employee, and the employment contract could be terminated without initiating an Official Procedure.

In a nutshell, when the latest amendments to the Labor Act were prepared, in July 2014, the legislator sought to help employers by creating a system to prevent the abuse of sick leave. Unfortunately, however, the abuse of sick leave still remains a perplexing problem.

*This article was edited and first appeared on [CEE Legal Matters](#).*