

Seeing doctor during working hours (3/22/19)

Employees often have to make an appointment to see a doctor during their working day, so they are absent from work or leave their workplace in the middle of the day. Is the employee entitled to such temporary absence? How do we handle this properly?

The legal framework

The law is silent about an employee's right to see a doctor during working hours. Such an appointment is best made either outside working hours or during a break, which the employee is permitted by law to use freely at their discretion.

Section 145(2) of the Labour Code provides that a break should be granted no later than four hours after work began and cannot be shorter than 30 minutes. This is the time the employee may see a doctor without notifying the employer.

An employee that sees a doctor outside the break prescribed by the employer's internal rules may invoke section 147(2) of the Labour Code, which entitles the employee to temporary absence if their immediate presence is not possible because of any force majeure, accidental or any other extraordinary circumstances. It is advisable to ask for a doctor's note to show the employer that the employee has really seen a doctor.

Section 147 of the Labour Code separately grants the following rights:

1. A pregnant woman in the run-up to birth may leave her workplace to make a health check that cannot be made outside working hours;
2. An employee caring for a child up to 18 years old is entitled to temporary absence in the event of the child's sickness or accident, and to attend the child's health check that cannot be made outside working hours.

If one of the reasons for temporary absence prescribed by section 147 of the Labour Code is present, the employee should duly notify the employer of the temporary absence. The Labour Code is silent about the length of temporary absence, but the employee has no right to abuse these circumstances, and the employer has no right to terminate the employment contract because of the employee's temporary absence.¹

Temporary absence does not directly entitle the employee to payment for the absence time, but it is advisable to discuss this matter with the employer. It is very likely that the employer will not object to the absence and will not make a pay deduction for the time spent seeing a doctor. Also, flexible working hours are becoming increasingly popular, so employees can schedule their work more freely. More and more employees are allowed to work at some other time to compensate for any working hours they have spent for private purposes (including an appointment at the doctor's).

If seeing a doctor takes the whole working day or a significant part of it, the employee may ask the doctor to issue a class A incapacity certificate (this should be issued for the first ten days of sickness). But the class A incapacity certificate does not require the employer to give sick pay to the employee for one missed working day or missed working hours. Based on this certificate, the employer is liable to pay at

least 75% of the employee's average earnings for the second and the third day of sickness and at least 80% of their average earnings from the fourth to the tenth day of sickness.²

Anyway, before looking up the right piece of legislation for defending their entitlement in the case of seeing a doctor, the employee is advised to discuss it with the employer. It is very likely that this issue can be resolved in a simple conversation – after all, talking to your employer may produce better results than invoking any piece of legislation.

¹ Velga Slaidina, Ilze Skultane, *Employment Law, Zvaigzne ABC, 2012, page 208*

² Section 36(1) of the Maternity and Sickness Insurance Act