

26.04.2016

Dr. iur. Bernhard Madörin

Tax and Fiduciary Expert
Licensed Audit Expert RAB
Licensed Insurance Intermediary FINMA

When employees are absent and how the company reacts

Dear Sir or Madam,

In this newsletter we would like to look at the rights and obligations of both employees and employers in cases of lost work time.

Absence due to illness of employees

For a first detailed look, we take as an example absence caused by illness of up to a month. In this situation, Swiss employment contract regulations – as defined by the Code of Obligations – primarily serve as the legal basis for any issues regarding work law. The law provides that a company has an obligation to continue salary payments during such short-term absences and – accordingly – an employee is also entitled to receiving full salary payments. As a consequence, by act of law, short-term absences caused by illness do not lead to a reduction in salary. The company is obliged to pay the full amount of salary, and the employee is entitled to receive the full amount of salary, despite his or her absence from the workplace due to illness.

How is continued salary payment regulated?

Should the absences due to illnesses exceed one month, the legal obligation to continue the payment of salary depends on the duration of the employment relationship. The longer the employment relationship, the longer the company is obliged to continue paying salary in illness-related absences. This can go on for up to half a year. The interpretation relating to the continued payment also refers to various cantonal models, for example the so-called Basel scale or the Bern scale. After this period, the obligation to continue salary payment ends.

Most of the companies in Switzerland have taken out a daily benefits insurance. In the majority of those situations, it has become established practice that during any illness, longer than a period of one month, this insurance covers 80% of the obligation to continue salary payment during the next two years. Any claim against the insurance company on continuation of the salary payment thus becomes a burden on the employee. As a consequence, the company either becomes a transitory unit, or – should the absence caused by illness be long-term – the salary will be paid to the employee directly by the insurance company. An open question in this situation is the handling of the waiting period until the daily benefits insurance begins to be paid. If the law is applied precisely to the letter, an employer who has taken out a daily benefits insurance has only to pay out 80% of the salary during this first period – which is exactly the same amount that, in percentage, is defined by the daily benefits insurance.

However, it has become common practice in the majority of cases that companies do not make any salary reductions. Once a company takes this path and it becomes common knowledge among staff, it cannot deviate from it in individual cases and is thus for all employees obliged not to stray from this path.

The obligation to continue salary payment during short-term absences caused by accidents is similarly regulated. However, in these situations the Swiss Accident Insurance Act comes into effect, replacing the various regulations in collective employment agreements or cantonal models. This is compulsory for all employees in Switzerland, and requires all companies to adhere to payment of 80% of the salary after the third day (of absence). Most companies deal with short-term absence due to accident by paying the full salary, until entry into obligation to payment by the accident insurance, a payment of 80% of salary, comes into effect.

How to deal with both self-inflicted absences and absences without fault?

Generally in any absence – both self-inflicted and without fault – an employee is under obligation to inform the company. For absences noted in advance (for example weddings, bereavement, et al.) there are often claims for days off in regulations or collective employment agreements.

Should an employee be absent without any fault on his or her part, he or she is required to inform the company about this absence as soon as possible. Generally notification about absence due to illness happens on the very first day of absence. In many situations either work regulations or directives by the company stipulate that a medical certificate must be submitted within either one or three days. This has nothing to do with harassment, it fully covers the company's claim to receive confirmation in writing.

What applies to illnesses and accidents also applies to absences due to pregnancy. Differences here are insignificant. After pregnancy Swiss law has introduced maternity leave with full pay, just like military service, which covers salary payments via the Loss of Payment Compensation.

Full-time vs. part-time employment

Whether full-time employment or part-time employment, the claim for continuation of salary payment remain identical. Should an absence be only short-term then generally the full salary is paid out, whereas 80% of the salary is paid out should the absence be long-term, just as provided for by the insurance. Anyone working part-time, for example 50%, receives 80% of his 50% salary after the waiting period. Quite difficult to assess is the situation for staff with hourly wages. This relies very much on how the usual company practice. In disputes, very often the average amount of hours worked during the last few months is taken as a basis, and the resulting average salary is the basis for compensation. Resorting to the courts is not extensive, as in most cases only a small amount of money is involved, and as companies on the one hand are generally generous while on the other hand employees working on an hourly rate will seldom take companies to court.

Notice during absence

During any absences that are caused by either accidents or illnesses, a statutory protection against dismissal exists. Any notice that had been handed out just before absences due to accident or illness occur come to a standstill during that time, the obligation to continue payment of salary remains. Once this obligation has come to an end, the notice period runs its course until its end, thereafter employment is

terminated. This means that the contractually agreed or legal salary continues to be paid during the period of absence, and once work can be taken up again, the full salary must be paid until the end of the notice period. Dismissals during such absences are null and void.

Invalidity insurance comes into effect during long absences

After expiry of contractual or statutory obligation to continue salary payments, the duty to pay salary ends. Most insurances provide for an obligation to pay salary for an absence of two years. Many companies have taken this period into account for the coordination of the occupational pension plan. Should an inability to work go beyond a period of two years, it should be the case that after accident benefits or daily illness allowance are terminated, payments by the Invalidity Insurance should start covering the occupational pension plan. If this period is in compliance, a full insurance coverage exists. If this period is not in compliance, additional obligations for the employer might come in, to cover the salary in order to bridge contribution gaps. If non-compliant in the sense that these two periods overlap, then the continuation of salary payment is by law topped at 90%. This can lead to a doubling of premiums without necessarily resulting in additional benefits. A company would be well advised to coordinate on this issue with an insurance consultant.

Finally, an employee also has his or her individual responsibility. It is true that thanks to these provisions, and with the help of the Swiss insurance system, most employees can be guaranteed almost full coverage for continued salary payments whilst being either injured or ill. Whatever the situation may be, it is recommended that employees closely examine any possible gaps in insurance cover with the help of an insurance company and, wherever necessary, fill any gaps. These could occur due to particular obligations towards children, third parties and the like. However, it is also possible that, if fully disabled, further benefits might be required to make life easier in worst-case scenarios.

Kind regards

artax Fide Consult AG

Member of Morison International

Gartenstrasse 95, Postfach, 4002 Basel
Tel: +41 61 225 66 66, Fax: +41 61 225 66 67
info@artax.ch, www.artax.ch