

WE KNOW

HUMAN RESOURCES

ABANDONMENT OF EMPLOYMENT

QUICK GUIDE

This Quick Guide provides summarised information about dealing with situations where an employee fails to attend work without notification and without any apparent reason.

FAMILIAR SCENARIO?

An employee fails to arrive at work. No message is received. Another day or two passes by, still without any word from the employee. The rumour mill is in full swing – the employee is holidaying with his girlfriend in Queenstown... the employee has another job.....You make attempts to contact the employee and leave messages on his cell phone, all to no avail.

WHAT DO YOU DO?

Has the employee left with no intention of returning: if not, how long are you expected to keep the position open? Do you terminate employment? If you do and the employee shows up at work must you reinstate?

It's a scenario which frequently presents difficulties for employers and one which can be more effectively dealt with through the use of an appropriate provision in the employment agreement.

Commonly referred to as 'abandonment of employment' clauses, these provisions can help take the guess work out of an employee's status. Properly drafted, they place the onus for contacting the employer in the event of unforeseen absence upon the employee and where that does not occur within a pre-defined period, acts to bring the employment relationship to an end. Because this is not viewed as a dismissal i.e. termination at the initiative of the employer, it may not be challenged as an unjustifiable dismissal through the personal grievance process.

This does not necessarily mean that an employer's refusal to reinstate an employee who had good reason for being absent and not able to report the absence would be justified.

ENDEAVOUR TO CONTACT THE EMPLOYEE

Even where an 'abandonment' clause of the type described above exists, an employer should make reasonable attempts to contact the absent employee and, if not contactable, leave messages expressing concern and urging the employee to contact the employer as soon as possible. A note of these actions should be kept for future recall if necessary.

In the event of no communication being received from the employee or a representative, it is recommended that a letter be sent to the employee's last known address recording the fact of the employee's absence without notification or authorisation, the steps taken by the employer to contact the employee, and setting out, in full, the terms of the 'abandonment' provision from the relevant employment agreement together with the advice that, relying on that provision and the absence of any communication from the employee, the employer now regards the employment as having ended.

CONTINUE TO ACT IN GOOD FAITH

The employee may respond to the letter protesting your actions. If that happens, invite the employee to attend a meeting so that the employee has an opportunity to explain their absence and why you should not

reasonably regard the employee as having abandoned their employment. Ensure that you have a witness present at the meeting. Consider any explanations with an open mind – but the onus is upon the employee to persuade you that it would be unreasonable to hold to the view that the employee had abandoned their employment.

OTHER ISSUES

There may be subsidiary issues associated with abandonment, for example, if the employment agreement provides for forfeiture of wages in the event of a failure to provide notice. In this case the letter to the employee referred to above should also set out what actions have been taken with respect to final pay.

For further information regarding Abandonment of Employment or other aspects of Employment Relations, please contact The Chamber, email info@cecc.org.nz or phone 03 366 5096.