



## **Amendment to the Act on Sick Pay**

On 12 June 2009, the Danish Parliament passed a bill on amendment of the Act on Sick Pay ("the Act"), which is described below.

### **Innovations in the Act on Sick Pay**

The purpose of the innovations in the Act is to reduce absence due to illness.

According to the new rules, the employer must summon an employee on sick leave to a personal interview concerning how and when the employee can return to work. The interview must be held no later than four weeks after the first sick day and the employer shall, based on the interview, report back to the municipality, cf. Section 7a (1) of the Act on Sick Pay.

If the illness or practical circumstances prevent the carrying out of the personal interview, the interview must to the extent possible be held over the telephone. However, if the employee is not able to participate in the interview, this will have no consequences for the employee's right to sick pay, cf. Section 7a (2).

The above does not apply if the employee is under notice of dismissal and the exit takes place no later than eight weeks after the first sick day.

### **Retention Plan**

Furthermore, the Act introduces new rules on the preparation of a retention plan. A retention plan states how the employee may return to work fully or partly. The plan is jointly made between the employer and the employee.

The retention plan must be in writing and must describe when and how the employee can return to work – including whether the return will be in full or in part.

If the employee does not expect to return to work within eight weeks of the first sick day, the employee may request that a retention plan be jointly made. The request can be made at any time during the period of absence due to illness.

If the employer determines that there is no need for such a plan, the employer may decline the drafting of the retention plan. Provided that a plan is made, the employee shall bring the plan to the first follow-up interview at the municipality.

### **Declaration of Ability**

The amendment to the Act also introduces a new arrangement where the employer can demand a declaration of ability from the employee in case of brief, repeated or prolonged absence due to illness

The purpose of the declaration is to contribute to keeping the employee employed and thus to optimise the employee's possibility to return to work in full or in part.



The declaration is based on dialogue; firstly between the employer and the employee and subsequently between the employee and the doctor. The declaration must be handed in on a certified form from the National Labour Market Authority. The employer shall bear all expenses connected with the form.

Consequently, the declaration consists of two parts – the first part is composed by the employer and the employee, and the second part by the doctor.

While drafting the declaration, the employer and the employee shall jointly fill in information about the employee's decreased functionality, affected job functions and possible light job initiatives. Afterwards, the doctor fills in the rest of the declaration in view of the interview with the employee and the information in the first part of the declaration with focus on the employee's ability to work despite the illness. The doctor shall therefore evaluate the employer's suggestion as to light job possibilities.

The doctor can also make suggestions as to light job possibilities and estimate the duration of the light job possibilities. If the doctor finds that absence from work is required, the doctor must indicate this, including whether the absence must be full or partial.

The employer may at any time request such a declaration, and the employer must, furthermore, summon the employee to an interview with reasonable notice. According to the comments to the bill, reasonable notice is approximately one week. If the illness prevents the employee from participating in a personal interview, the interview can be held by telephone.

The creation of the declaration of ability does not affect the employer's right to demand an ordinary medical report. However, an ordinary medical report can not replace the declaration of ability. However, there have been doubts as to whether the employer may request an ordinary medical report if the employee does not want a declaration of ability.

According to a guidance note from the Medical Association's Form Committee to the doctors, in the event of a patient seeking documentation for his/her illness to the employer, the doctor may advise an employee to make the declaration instead.

Furthermore, it appears from the guidance note that the doctor in a form must request the employer to provide written explanation as to why the employer wishes to use the ordinary medical report and not the declaration of ability.

In relation to the interview, the employer still has to bear in mind the regulations in the Act on Health Declaration. The employer can ask about symptoms or diseases that have a considerable affect on the employee's capacity for work, but only in rare cases is the employer allowed to request information about the employee's actual medical condition. For more information on what an employer is allowed to ask an employee see: <https://www.retsinformation.dk/Forms/R0710.aspx?id=125714>

## **Coming into force**

The regulation regarding follow-up interviews and retention plan will come into force for employees with the first sick day on 4 January 2010 or later.



# Moalem Weitemeyer Bendtsen

Advokatpartnerselskab

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The regulation regarding declaration of ability came into force on 5 October 2009.

*If you have questions regarding the above or require additional information about the amendment to the Act on Sick Pay, please contact attorney Thomas Weitemeyer ([twe@mwblaw.dk](mailto:twe@mwblaw.dk)) or junior associate Lotte Gydesen ([lgy@mwblaw.dk](mailto:lgy@mwblaw.dk)) or junior associate Pinar Gökçen ([pgö@mwblaw.dk](mailto:pgö@mwblaw.dk)).*

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