



## An unjustified absence of one day is insufficient to justify a dismissal with immediate effect

An employee hired under a permanent contract was dismissed with immediate effect for serious misconduct, due to an unjustified absence of one day.

In first instance, the judge declared the dismissal with immediate effect justified and dismissed all the employee's related claims.

The employee appealed the judgement and alleged primarily that (i) she was protected against her dismissal pursuant to article L.121-6 of the Labor Code, implementing a protection against dismissal in the event of incapacity for work and additionally that (ii) the reasons for her dismissal were neither precise, no real or serious and that her dismissal is unfair.

Pursuant to article L.121-6 of the Labor Code, an employee, unable to work due to illness/accident is obliged, on the day of the illness/accident, to inform the employer personally or through a third party, orally or in writing.

On the third day of his absence at the latest, the employee is obliged to submit to the employer a medical certificate attesting his incapacity to work and its foreseeable duration. The employer duly notified or in possession of the medical certificate shall not be entitled, even for serious reasons, to dismiss the employee.

Both the information and the submission of a medical certificate must have reached the employer within the time limits set out in article L.121-6. (i.e. information about the illness the first day of the illness and submission of the medical certificate within the third day of the illness).

In the event of a dispute, it is up to the employee to prove that she has respected these time limits.

In this case, the Court of Appeal, confirmed that there is no evidence that the employee informed her employer of her incapacity to work due to illness on the first date, so that she was not protected against her dismissal.

The Court of Appeal further confirmed that the reasons for dismissal were enough precise. The employee's presence at the workplace constitutes an obligation of result, so that her unjustified absence alone constitutes a misconduct, which may justify a dismissal, without obligation for the employer to provide any details regarding the disorganisation of his service and its extent.

However, the Court of Appeal noted that although the employee had only two years of service, a one-day absence is, in this case, insufficient to justify such a serious measure as a dismissal with immediate effect.

Although the dismissal was declared unfair, the Court of Appeal rejected the employee's claim for material damage because an employee is obliged to minimise her loss and to make the necessary efforts to find a new employment as soon as possible, which was not the case here, according to the Court.

Linari Law Firm is of course available should you need any assistance regarding labour law or dispute resolution (legal advice, pre-litigation and litigation)

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