



Dear Members

We hope that January has been refreshing for you and that the rest of 2025 will usher in substantial growth for your business. We're excited to provide you with the latest updates regarding Labour Law, along with news from HASEA. Wishing you all the best in 2025; we are dedicated to keeping you updated on these important developments.

LABOUR NEWS

This month, our newsletter delves into Medical certificates – what constitutes a “valid” medical certificate?, in an insightful article by Jan du Toit (Labour Guide). If you have questions or need further guidance, feel free to contact us.

Medical certificates – what constitutes a “valid” medical certificate?

The BCEA and medical certificates

The abuse of sick leave is costing employers millions if not billions of rands every year in South Africa. To address this, we will have to go back to basics and determine whether a medical certificate is a valid, justifying the payment of the employee from his or her sick leave entitlement.

Who may sign medical certificates

Section 23 of the Basic Conditions of Employment Act deals with proof of incapacity and states: 23. (1) An employer is not required to pay an employee in terms of section 22

if the employee has been absent from work for more than two consecutive days or on more than two occasions during an eight-week period and, on request by the employer, does not produce a medical certificate stating that the employee was unable to work for the duration of the employee's absence on account of sickness or injury.

(2) The medical certificate must be issued and signed by a medical practitioner or any other person who is certified to diagnose and treat patients and who is registered with a professional council established by an Act of Parliament.”

From this section of the Act it is clear that there are two requirements in order for a medical certificate to be a valid medical certificate; it must state that the employee was unable to perform his or her normal duties as a result of illness (or an injury) and must be based on the professional opinion of the medical practitioner. In other words, a certificate that states that the practitioner “saw the patient” or “was informed by the patient” is not considered to be a valid medical certificates since the practitioner did not declare in his or her professional opinion that the employee was unable to perform his or her normal duties as a result of illness (or an injury). Such certificates are merely an indication that the practitioner saw the patient, in example a check up, or that he was informed that the patient was unfit for duty.

The second requirement is that the certificate must be issued by a medical practitioner. A medical practitioner is described in the definitions of the Act as:

“... a person entitled to practise as a medical practitioner in terms of section 17 of the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974);”



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In terms of the above mentioned Act the following professionals are considered to be medical practitioners:

- Medical practitioners (Doctor with MBChB degree) that are registered with the Health Professions Council of South Africa.
- Dentists that are registered with the Health Professions Council of South Africa.
- Psychologists with a Masters Degree in Research, Counselling or Clinical Psychology that are registered with the Health Professions Council of South Africa.

The above mentioned Act makes reference of another Act, the Allied Health Service Professions Act 63 of 1982. Practitioners mentioned in this Act must be registered with the Allied Health Service Professions Council in order to issue medical certificates. Employers must be accept medical certificates from such practitioners as proof of incapacity in terms of the Basic Conditions of Employment Act.

A practitioner is defined in terms of the aforementioned Act as a person registered as an Acupuncturist, Ayurveda practitioner, Chinese medicine practitioner, Chiropractor, Homeopath, Naturopath, Osteopath, Phytotherapist or Unani-Tib practitioner.

Traditional Healer Certificates

Employers do not have to accept certificates from traditional healers unless they are bound by a collective agreement to accept such certificates. The Traditional Health Practitioner Act of 2004 was the declared unconstitutional in 2006 because public participation never took place before the Act was promulgated. The 2007 Act was assented to in 2009 but has not yet been promulgated in full. Traditional healer certificates with practice numbers are merely an indication that the traditional healer registered with the Interim Council established in 2005 (no longer exists), or with an association

Nursing Staff Certificates

Section 23(2) of the Basic Conditions of Employment Act (Act 75 of 1997) requires that medical (sick) certificates must be issued and signed by a Medical Practitioner or any other person who is certified to diagnose and treat patients.

Accordingly, the SA Nursing Council is of the view that Professional Nurses with post basic diplomas/ additional qualifications who are registered as such by the Council are permitted to issue sick notes as they are deemed to be competent to provide specialized nursing care in their field of practice. Professional Nurses who do not possess the additional qualifications as stated above may only issue certificates of attendance.

The recommended period for Professional Nurse Practitioners to issue out a sick note is a maximum of two (2) days. If the patient condition has not improved, the patient should be referred to a Medical Practitioner or to the next level of care for further management.



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To be valid; a sick note issued by the Nurse Practitioner must contain the following:

- The name, address and qualification of the attending practitioner;
- The name of the patient;
- The date and time of the examination;
- Whether the certificate is being issued as a result of personal observations by the practitioner during an examination or as the result of information received from the patient, and is based on acceptable medical grounds;
- The exact period of recommended sick leave;
- The date of issuing of the sick note; and
- Identity of the practitioner who issued the certificate which shall be personally and originally signed by him or her next to his or her initials and surname in print or block letters.

Nurse Practitioners who fail to comply with these directives will be liable for acting beyond their scope of practice.

Medical and Dental Professions Board Rules – Medical Certificates

The following excerpt from the Ethical and Professional Rules of the Medical and Dental Professions Board of the Health Professions Council of South Africa can further serve as guidelines for employers in order to determine the validity of a medical certificate.

Rule 15(1) A practitioner shall only grant a certificate of illness if such certificate contains the following information, namely:

- (a) the name, address and qualification of the practitioner;
- (b) the name of the patient;
- (c) the employment number of the patient (if applicable);
- (d) the date and time of the examination;
- (e) whether the certificate is being issued as a result of personal observations by the practitioner during an examination, or as the result of information received from the patient and which is based on acceptable medical grounds;
- (f) a description of the illness, disorder or malady in layman's terminology with the informed consent of the patient:: Provided that if the patient is not prepared to give such consent, the medical practitioner or dentist shall merely specify that, in his or her opinion based on an examination of the patient, the patient is unfit to work;
- (g) whether the patient is totally indisposed for duty or whether the patient is able to perform less strenuous duties in the work situation;
- (h) the exact period of recommended a sick leave;
- (i) the date of issuing of the certificate of illness; and



(j) a clear indication of the identity of the practitioner who issued the certificate which shall be personally and originally signed by him or her next to his or her initials and surname in printed or block letters .

(2) If pre-printed stationery is used, a practitioner shall delete words which are irrelevant.

(3) a practitioner shall issue a brief factual report to a patient where such a patient requires information concerning him or herself.

The above is largely self explanatory. Rule (e) refers to those occasions where, for example, the employee has been off sick on Monday and Tuesday and then on Wednesday he goes along to the Doctor and informs the Doctor that he had flu since Monday and requires a sick note. The Doctor will then normally write in the sick note that "I was informed that the patient etc."

Employers do not have to accept this as genuine illness. The Doctor is merely confirming that the patient said he was ill. The Doctor is not certifying that he made an examination and is able to confirm the illness.

One would therefore be perfectly justified in informing the employee that the time taken off will be regarded as unpaid leave and that in future he should visit the Doctor as soon as possible and not wait until after he has recovered from the alleged illness.

Rule (f) states that the Doctor should give a description of the illness. This may not always be stated, particularly where the nature of the illness, if disclosed, may embarrass the patient.

Note that in terms of rule (j) the medical practitioner is required to print his name and initials on the medical certificate in addition to his usual signature.

Key Points

- The abuse of sick leave or altering a medical certificate is serious misconduct and a dismissal may result
- Medical certificates must be signed by a medical practitioner as described in section 17 of the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974)
- Medical practitioners must be registered with either the Health Professions Council of South Africa or the Allied Health Professions Council of South Africa
- The certificate must state that the employee was based on an examination declared medically unfit to perform his or her normal duties
- Rule 15 of the Medical and Dental Professions Board Rules may be used as guidelines for determining whether a certificate is valid
- Traditional Healer certificates are currently not considered to be valid medical certificates in terms of the Basic Conditions of Employment Act. In 2011 some of the sections of the Traditional Health Practitioners Act, Act 22 of 2007 were proclaimed and they primarily deal with the establishment of a council.
- Checkups and routine visits are not considered to be sick leave in terms of the Basic Conditions of Employment Act.



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Source:

<https://www.cliffedekkerhofmeyr.com/news/publications/2024/Practice/Employment/employment-law-19-november-A-new-era-for-traditional-healers-A-step-towards-formalisation-and-regulation>

ORGANISATIONAL NEWS

As HASEA is a National Organisation with branches in various provinces, we are very proud to announce the following members that have been added to the HASEA family:

Lifts and escalators cc - Durban

Summer Spring Trading cc - Durban

At HASEA, we prioritise growth and have also selected organisers in various provinces to ensure our service level remains exceptional! Feel free to share this newsletter with other businesses or family members who may benefit from our services.

For more information regarding our services, you can visit our website www.hasea.co.za or email us: admin@hasea.co.za / accounts@hasea.co.za