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Labor "Extremism" or How to Deal with Unscrupulous Employee

Any business activity, one way or another, is connected with the involvement of labor resources, since with the development of the company it becomes impossible to independently perform the necessary functionality.

Thus, entrepreneurs and heads of business structures attract employees to perform certain duties, concluding employment contracts.

Everyone builds relationships in the working team in different ways but sooner or later everyone has a situation when an unscrupulous employee, not fulfilling his duties, or having committed a disciplinary offense, understands the inevitability of a punishment and goes on a sick leave, hoping that after a while the employer will calm down, the consequences of the offense will be not so significant, and the situation will cool out.

For its part, this approach does not suit the employer, but in this situation, its capabilities are significantly limited.

So, what can the employer do in a situation where the employee "hides" on sick leave.

During the administration of "Labor Code of RSFSR" the employer had an opportunity to monitor the employee's compliance with the sick leave by checking them at home as part of a specially created commission, to send requests to medical institutions in order to obtain information about whether the employee attended a doctor, whether he was given a sick leave and with what diagnosis.

At the moment, such data are protected by the law and belong to medical confidentiality, and, therefore, are not subject to disclosure.

However, the employer has the right to create a commission to review sick leaves in the company to make a decision on their payment. This commission can be created both on a permanent basis and in relation to a specific case.

In case of the creation of such commission on a regular basis, it is advisable to issue an order for the company to create such commission and approve the provision on this commission, which specifies all the rights and obligations of the commission.

If the commission is created for a certain case, all these points need to be specified in the order.

The next step, which an employer can take is to revive the practice of visiting sick employees at home.

Certainly, today the employee has the right not to open a door to the employer and not to let the employer into the apartment. Also, the employee may not be home for objective reasons (going to the clinic, pharmacy, grocery store, if the employee lives alone, etc.). However, the fact of controlling the employer for compliance with the sick leave will begin to discipline the employee himself.

Since high technologies are now widely developed, and many workers can not imagine their life without social media, it is logical to control changes made by employees to their personal pages or try to search information about the employee on the Internet.

So, in fact, one of these searches led to the fact that the employer revealed the fact that the employee on the sick note rendered performs cosmetology services.

This circumstance was recorded by the act of inspecting the Internet page by an order for conducting a service check, during which the question of the possibility of paying a sick-list for this employee was resolved.

The next step, by which the employer can influence the employee and defend himself, is sending a written appeal to the Social Insurance Fund and the state labor inspectorate if the employer himself establishes the fact of violating the sick leave.

This step is advisable in any case, since, despite the measures taken by the state to exclude the possibility of forging sick lists, the facts of their falsification are taking place to the present day.

It should be noted that such step is attended with the risk of the employee filing claims for disclosing his personal data and compensating for the harm, as well as the employee's appeal to the relevant supervisory authorities, to punish the employer for his actions.

However, it seems that with the correct justification for such actions, the risk of liability for disclosure of personal data will be minimal.

On the other hand, the Social Insurance Fund and State Labour Inspectorate will be obliged to check the circumstances set out in the employer's appeal and send an official response to it, on the basis of which the employer will be able to make an objective and legal decision regarding the sick leave submitted by the employee.

This step is advisable due to the fact that in case of detecting the violation of the sick leave, the employer has the right to pay the sick leave not based on the average earnings of the employee, and the size of the minimum wage established at the time of payment of the sick leave. In fact, the amount of sick pay calculated from the minimum wage is several times lower than the amount that the employee would have received under normal conditions.

The second reason for such actions is that when establishing the fact of violating the sick leave, when the employee did not attend the appointment with the hospital physician and on the day of appearance was recognized as capable of working, the employer has the opportunity to decide on the dismissal of the employee for absenteeism, i.e. a single gross violation of labor discipline.

Despite the fact that the judicial practice on this basis of dismissal today is ambiguous, its analysis suggests that in such situation, the courts adhere to the employer's side in most cases.

In conclusion, I would like to note that only with the maximum compliance with the requirements of the current legislation, the employer will be able to effectively influence the unscrupulous employee with minimal risks for himself and his business.

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Practice areas

EMPLOYMENT

Locations

RUSSIA