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## Workers Compensation = Paid Sick Leave?

Clients with employees on extended sick leave should consider the implications of a recent Federal Magistrate Courts decision that has extended the level of protection from dismissal for employees who are absent from work due to genuine injury or illness.

The *Workplace Relations Act 1996* ('the Act'), provides that it is unlawful to dismiss an employee for reason of (or reasons including) 'temporary absence' from work because of illness or injury. An absence is **not** a 'temporary absence' if the absence extends for more than three months (either continuous or over a 12-month period) or the employee is on paid sick leave for the duration of the absence.

The recent case referred to above involved an employee who had been employed by a childcare provider on a casual basis from August 1995. In October 2002, the employee suffered a workplace injury and was provided with Workers' Compensation benefits. In August 2005, a 'Return to Work' Plan was designed for the employee, consisting of an increasing number of hours to be worked per day with the balance of unworked hours to be subsidised by the Workers' Compensation arrangements made by the employer. The employee returned to work under this program, however was further absent from work on 30 March 2006 due to illness. On 4 April 2006, the employer terminated the employee's employment.

The employee commenced an unlawful dismissal claim, arguing that she was 'temporarily absent' from work and thus it was unlawful to terminate her employment for reason of the absence. The employee also claimed that her absence on paid workers' compensation was 'paid sick leave' and accordingly, while she was absent for more than three months, she was on paid sick leave for the duration of the absence and therefore entitled to protection under the 'temporary absence' provisions.

The Court accepted the employee's claim and found that it is unlawful to terminate an employee's employment because of absence from work if the employee is on paid workers' compensation (or a combination of paid sick leave and workers' compensation) for the duration of the absence.

This case highlights some of the key issues for consideration when managing long-term ill or injured Employees. **For further information on this issue, please contact Emma Howse on (07) 3839 1233 or [emma@mjsp.com.au](mailto:emma@mjsp.com.au)**