

DEFINITION – TEMPORARY ABSENCE (ILLNESS OR INJURY)

Section 352 of the Fair Work Act 2009 (Cth) prohibits an employer from dismissing an employee because that employee is temporarily absent from work because of illness or injury of a kind prescribed by the Fair Work Regulations 2009. The Regulation that outlines this definition is as follows:

Fair Work Regulations 2009- Regulations 3.01

Temporary absence- illness or injury

1. For section 352 of the Act, this regulation prescribes kinds of illness or injury.

Note Under section 352 of the Act, an employer must not dismiss an employee because the employee is temporarily absent from work because of illness or injury of a kind prescribed by the regulations.

2. A prescribed kind of illness or injury exists if the employee provides a medical certificate for the illness or injury, or a statutory declaration about the illness or injury within;
 - a) 24 hours after the commencement of the absence; or
 - b) Such longer period as is reasonable in the circumstance

Note The Act defines medical certificate in section 12

3. A prescribed kind of illness or injury exists if the employee:
 - a) Is required by the terms of a workplace instrument:
 - i) To notify the employer of an absence from work; and
 - ii) To substantiate the reason for the absence; and
 - b) Complies with those terms
4. A prescribed kind of illness or injury exists if the employee has provided the employer with evidence, in accordance with paragraph 107 (3) (a) of the Act, for taking paid personal/carer's leave for a personal illness or personal injury, as mentioned in paragraph 97 (a) of the Act.

Note Paragraph 97 (a) of the Act provides that an employee may take paid personal/carer's leave if the leave is taken because the employee is not fit for work because of a personal illness, or personal injury, affecting the employee

5. An illness or injury is not a prescribed kind of illness or injury if:
 - a) Either
 - i) The employee's absence extends for more than three months; or
 - ii) The total absences of the employee, within a 12 month period, have been more than three months (whether based on a single illness or injury or separate illnesses or injuries); and
 - b) The employee is not on paid personal/carer's leave (however described) for a purpose mentioned in paragraph 97 (a) of the Act for the duration of the absence.
6. In this regulation, a period of paid personal/carer's leave (however described) for a purpose mentioned in paragraph 97 (a) of the Act does not include a period when the employee is absent from work while receiving compensation under a law of the Commonwealth, State or Territory that is about workers' compensation.

Contacting the Victorian Chamber of Commerce and Industry

The Victorian Chamber's team of experienced workplace relations advisors can assist members with a range of employment, human resources and industrial relations issues.

Our experienced workplace relations consultants can also provide assistance to both members and non-members on a range of more complex matters for a fee-for-service. The consultants can, among other things, provide training to employees, conduct investigations and provide representation at proceedings at the Fair Work Commission.

For assistance or more information, please contact the Workplace Relations Advice Line on **(03) 8662 5222**.

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