

Vocational reintegration through novel part-time model

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Introduction

As of July 1 2017, new legislation came into effect that aims to ease the process of reintegration into the workplace for employees who have been on extended sick leave and who would benefit from a reduced workload in order to aid rehabilitation and reconnect with the workplace.

The new model is bifurcated in that its realisation in practice not only requires a contractual arrangement between the employer and employee, but also hinges on regulatory consent by the medical service of the social security provider and the grant of a special allowance.

Legal framework

The statutory framework mandates that for this new part-time reintegration to become effective, the following prerequisites must be met:

- The employment relationship must have lasted for at least three months, although periods of absence and sick leave are taken into account when calculating this three-month period.
- The sick leave must have continued for at least six weeks.
- An agreement between an employer and an employee regarding the employee's part-time reintegration can provide for a part-time period of between one and six months. However, employees have no statutory entitlement to part-time reintegration and employers can refuse to enter into such agreements.
- The effectiveness of the written agreement is conditional on receiving counselling by fit2work, a programme initiated by the quasi-governmental social security provider.
- Once the employer and employee have received counselling through fit2work, they must, in addition to the part-time reintegration agreement, conclude a reintegration plan under the supervision of an occupational health professional.
- The part-time reintegration agreement is subject to the condition that the social security provider grants a so-called 'reintegration subsidy'.
- If a works council has been established, it has a right to be consulted, but failure to comply with this requirement does not render the part-time agreement invalid.
- Part-time reintegration is based on the assumption that, although not fully recovered, the employee is generally fit to work at a reduced level. Thus, the employee's physician must provide a medical certificate concerning the employee's ability to work.
- The agreed reduction of working hours must, on average, fall between 50% and 75% of the employee's previous working hours, spread over the part-time period, and cannot be less than 12 hours per week.
- The actual working time per month can vary, but must amount to at least 30% of the employee's previous weekly working hours, provided that, on average, the 50% to 75% threshold is met (eg, first month at 30%, second month at 60% and third month at 90%; this

averages to 60% during a three-month reintegration).

- Although the employee has no legal entitlement to part-time reintegration, he or she can challenge a dismissal or termination if it can be shown that, for instance, either a request or a refusal by the employee to agree to the new part-time model was a decisive reason for the dismissal.

Calculating the reintegration allowance also requires some understanding of social security mathematics. In general, the subsidy is based on the sickness benefit payable by the social security provider and is paid *pro rata*, depending on the difference between the previous and reduced working hours (eg, if working hours are reduced to 75% of the employee's previous working hours, the subsidy amounts to the equivalent of 25% of the full sickness benefit). Several exceptions and special provisions apply to avoid double payment of benefits and clarify tax treatment and consequences when calculating statutory entitlements (eg, severance pay).

Concerns

Although it is a well-meant initiative to curb the increase in long-term sickness (which, some point out, is already the result of an overly well-meaning social state), the legal framework reveals some major flaws.

Effectiveness of agreements

The effectiveness of the agreement, and therefore any reduction in working hours, is subject to the grant of the reintegration allowance which, in turn, requires a medical check by the social security provider. This may take some time. In addition, the fit2work reintegration plan requires a medical check by another occupational physician who might have a different opinion on the employee's health and necessary working hours' reduction. This could lead to a situation where the employer and employee agree on the terms of the employee's part-time work, but the written agreement does not become effective because of a failed communication between the occupational health professionals involved. It remains to be seen how this stumbling block will be cleared in practice.

Employers access to diagnosis

The employer has no right to learn of the employee's diagnosis. Consequently, employers will struggle to assess an employee's needs and are left in the dark when, in fact, they are responsible for negotiating the terms of the part-time model, which should reflect those needs.

Work responsibilities

The statutory provisions specifically mandate that a part-time reintegration agreement must not affect the agreed tasks and responsibilities under the employment contract. This means that employer cannot assign the employee a different task during the part-time model, even though this might prove helpful for reintegration, unless the employer had reserved the right to request such a (albeit temporary) modification of responsibilities. Even then, the works council could still disagree, veto the measure (new job function) and thereby render instructions by the employer unenforceable.

Comment

Given the complex set of rules governing part-time reintegration, it is clear that the model will not be readily accepted and it remains to be seen whether employers will view this model as a viable means to reintegrate staff.

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