



Ascension Island Government

## Policy on Legal Requirement for Sick Leave Provision

<b>AUTHOR:</b>	Khushboo Khatra, Policy Officer
<b>OWNER:</b>	Simon Minshull, Administrator
<b>ISSUE DATE:</b>	November 2024
<b>VERSION NO:</b>	1.0
<b>STATUS:</b>	CONSULTATION DRAFT
<b>DATE OF LAST REVIEW:</b>	November 2024
<b>DATE OF NEXT REVIEW:</b>	With remainder of Employment Law Policy

### Contents

Background.....	1
Context.....	2
Issue.....	2
Principles and Objectives.....	2
Self-Certification & Medical Evidence.....	2
Termination of Contract while on Sick Leave.....	2
Failure by an Employing Organisation to Comply.....	3

### Background

1. The Ascension Island Government is committed to supporting the health and well-being of employees across all organisations on Ascension. This policy on Legal Requirement for Sick Leave Provision outlines the requirements of employers to allow sick leave to be taken, the certification requirements that may be enforced, and entitlement to sick pay. The policy ensures that employees are treated fairly while providing a framework for managing absence effectively.
2. Ascension has its own legislation regulating employment, which affects all employees and contractors working primarily in Ascension, regardless of nationality or state of original employment.

## Context

3. In July 2022, the Employment Ordinance, 2022 and its subsidiary legislation was introduced in Ascension. The policy it was based on was subject to significant review by the Employment Reform Working Group, and the Island Council.
4. The policy was consulted on with Employing Organisation and the general public between August 2019 and February 2021. A response to those consultations was issued in February 2021.
5. Sick leave and payment during sick leave was not expressly considered during by the Employment Reform Working Group as an inclusion in the Employment Ordinance, and was not referenced in the Consultation Response.
6. As a result of this, while each Employing Organisation is required to have its sick leave policy in the relevant Statement of Particulars on when employees may take sick leave (regulation 3(1)(a)(xii) of the Employment (Statement of Particulars) Regulations, 2022), there is no minimum amount of sick leave that is required to be provided.
7. Consequently, there is not a consistent minimum provision of sick leave across employing organisations across island. This has resulted in scenarios where individuals have decided not to seek medical care or take medical leave due to the financial impact this may have on them, or the continuation of their contract. It has also resulted in employees having to use annual leave entitlements when they have been unwell, which reduces the period of time that the employees may take leave for their own wellbeing.

## Issue

8. Accounting for the remote nature of Ascension, and the limited medical facilities available, it is considered appropriate that each individual should be given adequate opportunity to seek appropriate healthcare when they consider it necessary. This is to ensure the ongoing health and wellbeing of all workers in Ascension.

## Principles and Objectives

9. Sick Leave is considered to be part of the Employers Obligation to provide medical and dental care under the Employment Ordinance, 2022.
10. This policy aims to ensure all employees across Ascension have access to clear guidelines on minimum entitlements to sick leave, and to allow Employing Organisations to manage absences fairly and efficiently.
11. It is considered appropriate that each individual should be given adequate opportunity to seek appropriate healthcare or take time to recover from any sickness or injury, without being concerned of the financial effect this may have on them or their families, or their general wellbeing.
12. Employees will be entitled to receive their basic pay and contractual allowances while on sick leave. Employers may not require an employee to use their annual leave allowance as an alternative to sick leave.
13. In consideration of the limited healthcare facilities available, this policy also aims to prevent overburdening medical facilities in the requirement to provide sick notes by placing restrictions on how often they may be requested of employees.
14. This policy applies to anyone in working in Ascension. Employing Organisations are encouraged to go beyond the terms of this document and resulting legislation; this policy seeks to set a baseline in Ascension.

## Self-Certification & Medical Evidence

15. Employees should be permitted to self-certify their absence for a period of up to three consecutive working days. For periods longer than three consecutive working days, Employing Organisations may request that medical evidence is provided.
16. As self-certification has the potential for abuse, it is reasonable that the Employing Organisation may place limits on how often it may be taken by Employees. An Employer may request medical evidence is provided for periods of sick leave when the amount of self-certified leave has exceeded:
  - 16.1. 3 occasions in a six-month period; or
  - 16.2. for a period of 8 days in a 12-month period.
17. An Employee may not be disciplined in relation to any sick leave taken in accordance with the above.
18. Where medical evidence is provided, an employer may not request additional evidence in relation to one period of leave more often than:
  - 18.1. At the expiry of the recommendation of the medical evidence provided by the employee; or
  - 18.2. Once per calendar month.

## Termination of Contract while on Sick Leave

19. Due to the remote nature of Ascension, it is common that where medical treatment cannot be delivered in Ascension a person is required to receive treatment overseas, and remains overseas for the duration of that treatment. As a result of this, a person may be required to remain on sick leave for several months, on the recommendation of the SMO.
20. To allow a person to adequately recover, it is considered appropriate that a person may not have their contract terminated for the reason of absence from work while they are overseas on a medical referral by the SMO, unless the person has failed to follow reasonable instructions from the SMO with regard to receiving treatment or to returning to Ascension.
21. Similarly, a person may wish to remain in Ascension or in their home overseas while recuperating from significant illness, injury, or medical procedures. Where a person is on sick leave, but not currently receiving treatment, an Employing Organisation may not terminate their contract before they have been on sick leave for at least a cumulative period of more than a quarter of their current contract length, providing their recuperation is authorised by the SMO. Employing Organisations may request medical evidence in accordance with paragraph 18 from a medical professional in the relevant jurisdiction of the Employee if they remain overseas. Any cost incurred in obtaining this evidence will be met by the Employing Organisation.
22. An Employing Organisation that intends to terminate the Employee's contract on this basis should take reasonable steps to facilitate the Employee's return to work, which will include consulting the SMO to determine whether that is possible.

23. This does not place an obligation on an Employing Organisation to offer a new contract to an Employee who's contract expires while the Employee is on sick leave.

24. However, if a person receiving medical treatment (which includes sanctioned recuperation) is not in Ascension or their territory of return at the expiration of their contract, the Employing Organisation will retain all responsibilities for them under the Employment Ordinance, 2022 until they are in their territory of return. The decision of whether they are medically fit to travel will remain with the SMO.

**Failure by an Employing Organisation to Comply**

25. In order to safeguard the rights that will be established under this policy, the Employee will be given a statutory entitlement to bring a claim for damages and unfair dismissal in the event that it is not complied with.

26. In addition to this, failure to comply with this policy and the corresponding legislation will be considered an offence under s.14(5) of the Employment Ordinance, 2022, and may incur a fine of up to £150,000.

CONSULTATION DRAFT