



Termination of employment due to illness Poland & France



Termination of employment due to illness is a sensitive matter for many reasons and varies across different countries. Usually, it is related to employees' protection against dismissal, although such protection may result from different legal bases. The prohibition of terminating employment during an employee's justified absence from work can be such reason — as in the case of Polish regulations. In France, the termination of an employment contract while it is suspended due to illness is subject to strict regulations to protect employees from health-related discrimination. However, there are exceptions to every rule, which our experts from Poland and France explain in this article

In this article, our experts from [Zawirska Ruszczuk](#) in Poland and [MGG Legal](#) in France focus on 5 key questions and give us an overview of how things are done in their respective countries with respect to termination of employment due to illness.

When can an employment contract be terminated due to illness?



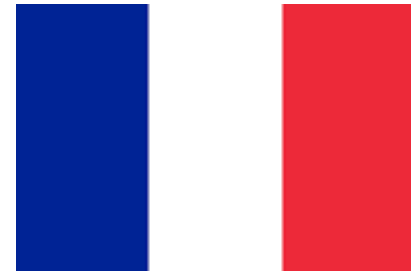
Termination of employment due to long-lasting illness can take place if the employee's incapacity for work lasted for an extended period, which depends on the length of their employment, i.e.

- a) sick absence lasts longer than 3 months – applies to employees who have been employed at their current company for less than 6 months;
- b) sick absence lasts longer than the combined period of receiving sick pay from the employer and statutory sickness benefit (182 days), as well as the so-called rehabilitation benefit for the first 3 months – applies to employees who have been employed at their current company for at least 6 months or to those whose incapacity for work was caused by an accident at work or occupational disease.

Termination of employment due to long-lasting illness has immediate effect, i.e. termination is effective at the moment the employee receives the termination letter, and cannot occur after an employee has returned to work following their recovery.

It is also possible to terminate an employee upon notice, e.g. due to long-lasting illnesses in case incapacity for work lasted for an extended period (similar to the period mentioned in Sec. b) above or longer) or due to shorter but repetitive and disorganizing multiple sick leaves, when such absences resulted in organizational problems of the employer. In this case the employee may be terminated while being present at work.

When can an employment contract be terminated due to illness?



In France, employees are protected against discrimination, which means that an employer cannot terminate an employee's contract due to illness. However, French case law allows the dismissal of an employee on sick leave if their long-term or repeated absences disturb the company's business and necessitate their permanent replacement. The term “permanent” here implies that the company needs to hire a new employee under a permanent contract, with equivalent working hours.

Moreover, for the dismissal to be deemed valid, the replacement must occur either shortly before or shortly after the date of dismissal, within a reasonable timeframe around the date of notification of dismissal.

How can an employment contract be terminated due to illness?

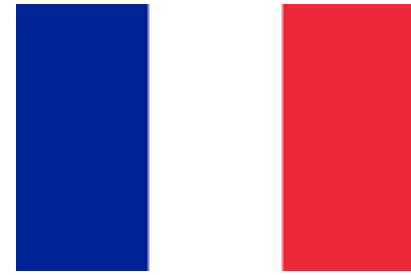


As in any other case, termination of the employment contract due to illness can be a subject of mutual agreement. Unilateral termination of the employment can occur through so-called immediate termination without the employee's fault (without any notice period) or upon notice (as explained above).

The moment of immediate termination occurs when an employee receives an termination document signed by their employer. Typically, such a document is sent to the employee by mail. In case of termination upon notice, the effective termination date depends on an employee's length of service and last from two weeks to three months.

The decision to terminate a contract of employment shall be made by the employer after consulting with the trade union representing the employee. The trade union must be informed of the grounds for contract termination.

How can an employment contract be terminated due to illness?



As previously mentioned, an employment contract cannot be terminated solely on the basis of illness. However, in cases of long-term or repeated absences that disturb the company's business and necessitate the employee's permanent replacement, the procedure for dismissal on personal grounds must be followed. In other words, the employer must invite the employee to a preliminary meeting; then send the dismissal letter that must explicitly mention both the disturbance to the company's business and the necessity to replace the employee permanently. The employee will only leave the company at the end of the notice period (which will not be served or paid if the employee remains off sick during this period).

It should also be noted that special rules apply when an employee is declared unfit to work by the company's occupational practitioner. Indeed, in such a case, a dismissal for unfitness to work would be possible.

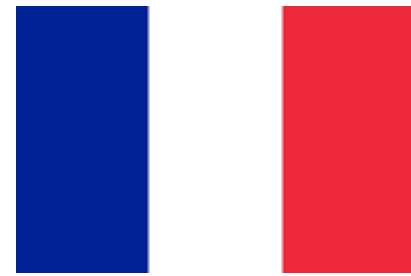
Is it possible to terminate employment during sick leave due to reasons other than illness?



As a rule, an employer may not give notice of termination of a contract of employment to an employee during their justified absence from work, including sick leave. Such protection of employees against termination of a contract results directly from the provisions of the Labour Code.

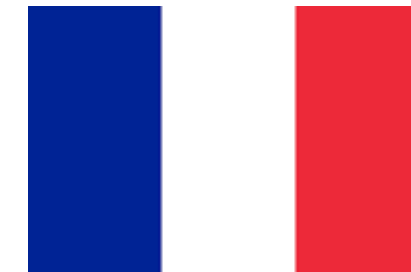
However, there are exceptions to every rule. In this case, such an exception would be, for example, the liquidation or bankruptcy of the employer, which excludes any employment protection. Also, in the case of so-called collective redundancies, the employer may dismiss an employee when the period entitling them to terminate the contract of employment without notice has expired (as explained in the first question).

Is it possible to terminate employment during sick leave due to reasons other than illness?



Employment contracts can still be terminated during period of sick leave for reasons unrelated to the illness itself, such as economic grounds or misconduct. In this last scenario, dismissal can be notified to the employee while they are on sick leave, for a reason preceding the suspension of the employment contract, but also for some events occurring during this period. This is particularly applicable if the employees breach their duty of loyalty to the company. A mutually agreed termination (“rupture conventionnelle”) can also be signed during sick leave, provided all conditions for its validity are satisfied.

Does a fixed-term employment contract extend during the period of illness?



The parties may agree in the probationary employment contract that such contract shall be extended by the duration of justified absences of the employee from work, including sick leave. In other cases, the period of illness does not extend the duration for which the employment contract was concluded.

The term of a fixed-term employment contract cannot be extended due to a period of illness. In other words, the sick leave does not prevent the fixed-term employment contract from expiring.

Is an employer obligated to rehire a former employee once they have recovered?



As far as possible, an employer shall rehire an employee who is ready to return to work within 6 months after their contract of employment was terminated through immediate termination without the employee's fault. However, the decisive factor for determining the possibility of rehiring an employee is an employer's need for work that the eligible person can perform based on their qualifications and health condition.

Once the employment contract is terminated, both employer and employee are no longer bound by its terms. This means that the former employer has no further obligation towards the former employee, even they have recovered. The only scenario in which an employer is obligated to rehire a former employee is following a dismissal for economic grounds. Indeed, employees who have been made redundant are given priority for rehiring ("priorité de réembauche") in their former company if it recruits on similar posit



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After practising employment and labour law for three years in an international law firm, Julien Delemarle joined MGG Legal in June 2017.

Julien assists French and international clients in particular during the negotiation of individual or collective agreements, but also in the context of the employment audits carried out through the lifecycle of companies (transfer, sale, merger, refinancing, etc.).

He is also interested in developing new ways of working, through digital platforms in particular, and is keen to help his counterparts in the industry gain a better understanding of the relevant applicable rules and their evolution.

He is a member of ELLINT Next, a working group within ELLINT.