

HR COMPLIANCE OVERVIEW

Best Practices for Responding to Job Abandonment

Job abandonment generally occurs when an employee fails to report to work for an extended period without notice to an employer. Job abandonment can lead to significant workplace disruptions and pose unique challenges to employers, including staffing and scheduling challenges, decreased morale and productivity, and general uncertainty.

To minimize the disruptions of job abandonment and prevent future occurrences, employers may implement the following best practices:

- Making repeated efforts to contact the absent employee;
- Conducting a fair and thorough investigation;
- Imposing appropriate discipline depending on the specific circumstances;
- Establishing a fair and consistent employer policy regarding job abandonment; and
- Training employees and managers on their responsibilities with respect to job abandonment and related issues.

Having a structured approach to respond effectively to job abandonment can protect employers from potential legal risk, mitigate the potential disruptions resulting from job abandonment, ensure fair treatment and manage employee morale. This Compliance Overview provides a high-level overview of employer best practices for responding to job abandonment.

Highlights

Some best practices for responding to job abandonment include:

- Contacting the absent employee;
- Conducting an investigation into the absence;
- Imposing appropriate discipline;
- Establishing a written policy; and
- Conducting employee training.

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OVERVIEW OF JOB ABANDONMENT

There is no single definition of job abandonment; however, job abandonment generally occurs when an employee fails to report to work for a certain number of days without notifying their employer and does not indicate an intent to return. Whether job abandonment occurs may depend on an employer's particular job abandonment policy or practices. Job abandonment is distinguishable from other unexplained or unexcused absences as it generally involves an employee's failure to communicate their absence and plan to return to work. Some examples of job abandonment include but are not limited to:

- Failing to report on the first day of work;
- Not calling or not showing up for consecutive days;
- Failing to return from an approved leave of absence;
- Leaving work mid-shift without notice (e.g., failing to return following a meal or rest break); and
- Failing to report to work following a relocation or reassignment.

BEST PRACTICES FOR RESPONDING TO JOB ABANDONMENT

Job abandonment can lead to a variety of challenges in the workplace, including staffing and scheduling issues, decreased morale, customer service challenges and uncertainty. Although employers may not be able to completely eliminate the risk of job abandonment, they can implement best practices to reduce the potential harm when job abandonment occurs.

Attempt to Contact the Employee

As a first step, employers should try to contact an employee who fails to provide notice of their absence. In general, employers should maintain a professional tone in all communications and convey to the employee the importance of responding, explaining their absence and providing an estimated return date. Employers may also warn employees of the potential ramifications of failure to respond in a timely manner or failure to provide adequate justification for their absence (e.g., termination). To contact the employee, employers may consider the following methods of communication:

- Calling or texting all telephone numbers on file (including work and personal numbers);
- Sending emails to both personal and work email accounts;
- Attempting to contact the employee through an internal messaging system;
- Reaching out to any emergency contacts; and
- Sending a letter via certified mail.

As a best practice, employers should attempt multiple methods of communicating with the employee before taking further action. For example, if an employee is absent due to a medical emergency, they may not have ready access to their work email account or phone, so an employer may need to try their personal email or phone number.

Employers should also document all attempts to contact the employee. Documentation may help support an employer's defense in case of future claims, such as wrongful termination. The documentation should generally include a log of the dates and times of the communication, copies of any written communication and any responses received.

Conduct an Investigation

Prior to taking any disciplinary actions, employers should conduct a fair and thorough investigation of the employee's job abandonment. In conducting an investigation, employers may consider the following steps:

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- **Review potential leave protections.** In some instances, employees will fail to report back to work after the conclusion of a protected leave of absence. To prevent potential legal violations, employers should review appropriate documentation and employee communications to ensure that such employees' continued absence is not protected under any federal, state or local leave laws. In some cases, the reason for an employee's absence may trigger employer obligations under leave laws, so employers should make every effort to determine the reason for the unexplained absence. Examples of protected leave include:
 - Family and Medical Leave Act leave;
 - Uniformed Services Employment and Reemployment Rights Act military leave;
 - Workers' compensation leave;
 - Americans with Disabilities Act disability leave;
 - Temporary or short-term disability leave (including on the basis of pregnancy); and
 - Other protected leave under state or local law.
- **Consider other extenuating circumstances.** Employers should also consider whether the employee has a valid reason for their absence that would influence whether discipline is appropriate or whether the factors warrant lesser punishment. Examples of extenuating circumstances include the following (some of the following may also qualify for protected leave as noted above):
 - Medical emergency;
 - Personal or family emergency;
 - Miscommunication by the employer, including by a manager or supervisor (e.g., a misunderstanding regarding an employee's shift); and
 - Inclement weather.
- **Confirm adherence to employer policies.** In conducting an investigation, employers should ensure that they are following any existing policies regarding job abandonment, absences and employee discipline. Failure to treat all employees equally could potentially result in allegations of discrimination.

Consider Termination or Other Disciplinary Action

In many cases, employers may determine that termination is the most appropriate action following an investigation. This is particularly likely when an employee fails to return repeated attempts at communication. However, in connection with an employee termination, employers may consider the following steps:

- **Consider contractual restrictions.** In general, most employees are considered "at will" (which means an employer may terminate their employment at any time for any lawful reason). However, some employees may be subject to an agreement that indicates employment is not at will. Therefore, employers should carefully review any existing agreements with the employee, including offer letters, handbook agreements or other contracts, to ensure that there is no language that indicates employment is not at will (e.g., an employment agreement that indicates a specific term of employment that does not explicitly provide for termination by the employer other than for cause. If employment is not terminable at will, employers should confirm that they are able to meet all applicable requirements to carry out the termination;
- **Review state and local laws.** There are no federal laws that restrict actions an employer may take in response to an employee's job abandonment (unless protected leave applies). However, a small number of state laws limit an employer's ability to terminate an employee who fails to report to work in certain limited circumstances; and

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- **Issue a formal termination letter.** If an employer decides that termination is the appropriate disciplinary measure, employers should generally issue a formal termination letter that outlines the reason for the termination, including dates of absence and the employer's documented attempts to contact the employee.

While termination is the most likely consequence for job abandonment, an employer may instead choose to impose disciplinary measures on an employee, such as a written or verbal warning, coaching or placement on a performance improvement plan. This may occur when an employee eventually does respond to employer communications and is able to provide an explanation for their absence or failure to contact the employer. Alternatively, an employer may determine that the employee had a particularly valid justification for their unexplained absence, such as a severe personal or medical emergency, and decide that no further disciplinary measures are necessary.

Regardless of the ultimate determination, employers should ensure they thoroughly document any disciplinary action taken, including the rationale, reference to any applicable employer policy and documented attempts to contact the employee.

Establish a Written Policy

Having a written job abandonment policy is essential for establishing expectations regarding attendance and ensuring consistent treatment of unexcused absence across the organization. A written policy is an important tool that employers may refer to when considering disciplinary action and appropriate next steps when an employee does not report to work. Employers may consider including the following provisions in a written job abandonment policy:

- The specific number of consecutive unexcused absences that constitute job abandonment. There is no law that governs what may constitute job abandonment, so employers have the flexibility to implement a duration that is appropriate for them. Often, job abandonment policies will specify a duration of three to five days.
- Multiple points of contact for employees to notify their employer of an absence. Typically, employers may provide contact information for appropriate department managers, as well as HR and related personnel;
- A description of the general investigation process that employers will use in case of job abandonment; and
- The potential disciplinary measures that may result from job abandonment, up to and including termination.

Employers may also consider requiring employees to acknowledge that they have received, reviewed and consent to the policy (or employee handbook, if such policy is included in the broader employee handbook) by signing and dating the policy or handbook, as applicable. Regardless of the specific policy an employer adopts, it is crucial that employers apply the terms of the policy consistently and fairly across all employees.

Conduct Training

To ensure that job abandonment procedures are followed consistently across the organization, employers may consider training employees on job abandonment and its consequences (e.g., termination). Such training may reduce the likelihood of future incidents if employees are aware of the repercussions and are provided with appropriate channels to report absences.

In addition, to ensure that job abandonment procedures are followed consistently across the organization, employers may consider training managers and supervisors on how to handle job abandonment, including methods for contacting an employee, obtaining coverage for absent employees, implementing discipline and ensuring proper documentation.

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EMPLOYER TAKEAWAYS

Job abandonment can cause significant workplace disruptions and challenges to employers. In addition, failure to appropriately respond to job abandonment could expose employers to potential employee claims. To minimize these disruptions and mitigate legal risks, employers may consider adopting the best practices outlined in this Compliance Overview.