NEWSFLASH
Employment Department | DWMC Legal

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Return-to-work reform for workers on work incapacity: what you need to know as employer

*As of **1 January 2026**, new measures entered into force as part of the third wave of the "Return to Work" policy. These new rules place greater responsibility on all stakeholders: employers, employees, physicians and health insurance funds. This newsflash presents the key developments that directly concern you as employer.*

1. PREVENTION: NEW RIGHT FOR WORKERS BEFORE THE INCAPACITY

As of 1 January 2026, a worker who is at risk of falling into incapacity for work may request — without any particular formality — that you examine whether an adjustment to his or her workstation and/or adapted work is feasible.

In practice, it is advisable to designate a reference person within your organisation to handle such requests. You must then inform the worker of the follow-up given to his or her request, whether positive or negative, as soon as possible.

2. ACTIVE ABSENCE POLICY

As of 1 January 2026, in addition to the collective reintegration policy, you are required to implement an internal procedure for maintaining contact with workers on sick leave.

This procedure must specify (at a minimum):

- Who will contact the absent worker;
- At what frequency

The aim is to maintain the employment relationship — not to monitor the incapacity, which remains an exclusively medical prerogative.

◆ **Please note:** this procedure must be mandatorily incorporated into your work rules, following the standard amendment procedure.

3. PRE-RETURN VISIT: A TOOL NOW OPEN TO THE EMPLOYER

The pre-return visit allows workers to meet with the occupational physician before returning to work, in order to anticipate the return and consider possible workstation adjustments.

As of 1 January 2026, the pre-return visit is maintained with certain adjustments, the most significant of which is that the employer may now directly request that the occupational physician invite the employee to a pre-return visit. The worker remains free to accept or decline this invitation. In the event of a refusal, the occupational physician informs the employer. Previously, the pre-return visit could only be requested by the worker.

The pre-return visit may be requested at any point during the incapacity for work, without any minimum prior duration. It may in particular take place following the mandatory work potential assessment (see point 5 below).

4. SOLIDARITY CONTRIBUTION PAYABLE BY THE EMPLOYER — NEW FINANCIAL OBLIGATION

A quarterly solidarity contribution is introduced for employers with an average workforce of at least 50 workers. It replaces the former reactivation contribution applicable to workers on long-term disability.

Conditions of application:

- Workers concerned: aged between 18 and 54 years, on sick leave for more than 30 days.
- Amount: 30% of the primary incapacity benefits actually granted for the 2nd and 3rd months of incapacity for work.
- Certain categories of workers are excluded.

5. MANDATORY WORK POTENTIAL ASSESSMENT

As soon as a worker has been continuously on work incapacity for at least 8 weeks, you are required to ask the occupational physician and his or her nursing staff to assess that worker's "work potential".

What is "work potential"?

It is the presumed capacity of a worker on work incapacity to perform adapted or alternative work, assessed on the basis of information relating to the worker's state of health and capabilities, with a view to the possible initiation of a reintegration pathway.

In practice:

- This obligation applies to ALL employers, regardless of the size of the undertaking.
- The assessment is carried out without a medical examination or any physical contact with the worker.
- It is based on available information (medical certificates, health file, two standardized forms).

Outcome of the assessment:

- No work potential identified → no further action required at this stage.
- Work potential identified and you employ fewer than 20 workers → you may, but are not required to, initiate further steps (pre-return visit or reintegration pathway).

◆ **Please note — for employers with 20 or more workers**: if work potential is identified, you are required to initiate a reintegration pathway no later than 6 months after the start of the incapacity. Failure to do so may result in sanctions (administrative or criminal fines).

This obligation applies only to incapacities for work starting on or after 1 January 2026.

6. REINTEGRATION PATHWAY 3.0: SHORTER TIMELINES AND NEW SANCTIONS

The reintegration pathway has also been amended. The key modifications are as follows:

- The employer may now initiate the pathway with the worker's agreement, from the very start of the incapacity (without having to wait for 3 months of uninterrupted incapacity).
- Where the work potential assessment is positive, employers with 20 or more workers are required to initiate the pathway no later than 6 months after the start of the incapacity (failing which sanctions may apply).
- The invitation sent by the occupational physician to the worker for the reintegration assessment must henceforth be sent by registered mail and must mention the risk of sanctions in the event of non-attendance.

- An uncooperative worker may have his or her health insurance benefits suspended, as early as following a failure to respond to the 2nd invitation to the reintegration assessment.

Pathways initiated before 1 January 2026 remain subject to the former rules.

7. MEDICAL FORCE MAJEURE: PERIOD REDUCED TO 6 MONTHS

The termination procedure on grounds of medical force majeure may now be initiated after 6 months of uninterrupted incapacity for work, instead of 9 months previously (Article 34 of the Act of 3 July 1978 on employment contracts).

In all other respects, the procedure remains unchanged: it still requires the involvement of the occupational physician and may be initiated by either the employer or the employee. It cannot be initiated while a reintegration pathway is ongoing.

No transitional provision has been provided for this measure, which applies immediately as of 1 January 2026.

◆ **Please note:** if you are considering termination on grounds of medical force majeure, strict compliance with the procedural requirements remains essential in order to avoid any subsequent challenge. Legal advice is strongly recommended.

8. MEDICAL CERTIFICATE AND GUARANTEED SALARY: TWO PRACTICAL CHANGES

A. Medical certificate: from 3 to 2 certificate-free days per year

Unless otherwise provided by derogation, a worker is exempt from producing a medical certificate for the first day of incapacity for work on 2 occasions per calendar year (instead of 3 previously). All other conditions remain unchanged.

◆ **Please note: employers with fewer than 50 employees** may still derogate from this rule, provided that such derogation is set out in a collective bargaining agreement or in the work rules.

B. Guaranteed salary: relapse period extended to 8 weeks

The relapse period — i.e. the period within which the guaranteed salary is not again owed by the employer in the event of a relapse following a period of incapacity for work — has been significantly extended: it increases from 14 days to 8 weeks.

- If an employee returns to work after a period of incapacity and relapses within 8 weeks: no new guaranteed salary is owed *(unless the new incapacity results from a different cause, duly evidenced by a medical certificate, or unless the first period of incapacity did not give rise to the payment of the full guaranteed salary).*

Any questions? Please do not hesitate to contact us. Upon request, we can also provide you with a ***practical checklist*** *of the concrete steps to be taken in order to comply with these new obligations.*

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