Question: An employee called out a few days ago by leaving a message with some vague information about being ill and hasn't followed up since. Can we consider this a voluntary resignation and start the termination process?

Answered by the HR Experts at Mineral

Most likely not. There are many reasons why your employee might not have been in contact since leaving the original message, and since they mentioned illness, there's a good chance their absence is protected by law. Potential protections come from the federal Family and Medical Leave Act (FMLA) and Americans with Disabilities Act (ADA), state-level family and medical leaves and disability protections, state or local sick leave laws, and state-paid leave programs that come with job protections.

Even if you have a job abandonment policy that says an employee will be treated as having voluntarily resigned after a certain number of days, this is not the time to use it. Since you know the absence started with a reason that may have protections and you did receive a call on the first day, it will be safest to hold off until you have more information.

We recommend trying a variety of ways to contact the employee to find out more about why they haven't been at work and when they expect to return. Try calling, texting, and emailing, and failing all that, send a certified letter. Document all attempts to reach the employee. If after an extended absence with no successful contact you decide to proceed with termination, detail your efforts to reach them in that communication. Be aware that if they finally do respond with an explanation that appears to be protected by law, you may ultimately need to restore them to their position.

This Q&A does not constitute legal advice and does not address state or local law.

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