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## Need to Know: When Workers Should Tell Employers Why They Are Absent

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Defense Secretary Lloyd Austin's failure to disclose his recent hospitalization has triggered an uproar in Washington, D.C.—and in workplaces beyond the capital city. Experts said employees should be prepared to disclose basic information about their own hospitalizations, for their own protection.

“You can't just go AWOL,” said Mark Neuberger, an employer attorney at Foley & Lardner in Miami. For most private employers, if an employee doesn't show up to work for three days without contacting the organization, that's considered quitting without notice, he said.

In Austin's case, the general underwent minimally invasive prostate cancer surgery Dec. 22 and was released from the hospital. He then was readmitted Jan. 1 due to complications and later transferred to the intensive care unit. He was released Jan. 15.

Neither President Joe Biden nor Deputy Defense Secretary Kathleen Hicks, who took over some of Austin's responsibilities Jan. 2 while she was on vacation in Puerto Rico, were informed of Austin's hospitalization until Jan. 4.

If the same thing had happened in the private sector, “most employers would be on good grounds for termination,” Neuberger said.

The Pentagon’s inspector general is now reviewing how the hospitalization was handled, and some officials are calling for Austin to be fired.

Employees who work in the private sector typically would want to disclose their hospitalizations or major medical issues “because that notice really triggers most of the employment law protections that exist in private employment,” said Corey Devine, a labor and employment lawyer and partner in the Houston law firm Muskat Devine.

Protections can come from the Family and Medical Leave Act (FMLA), the Americans with Disabilities Act (ADA), or from state or local laws involving paid sick time, Devine explained.

“The employer has to know what’s going on,” he said.

While a person would not have to specify that they would be absent from work because they were undergoing prostate cancer treatment, they would have to say that they would be absent for health reasons, Neuberger said.

Under the FMLA, employees can receive up to 12 weeks of unpaid, job-protected leave during a 12-month period, for qualifying family or medical reasons.

An employee must provide notice that they intend to use FMLA leave, according to the U.S. Department of Labor, and employers may request information from a health care provider before approving the request.

Under the ADA, which prohibits discrimination against people with disabilities, an employer must provide a reasonable accommodation for a person with a disability if it does not cause an undue hardship on the business.

Some states also have their own family- and medical-leave laws that may apply.

Although employees are not required to disclose that they are being hospitalized, by notifying the human resource department or their manager, they can “secure some sympathy and understanding for their predicament and move the issue away from not reporting to work to a scenario where it becomes an understandable, excused absence, and employers will generally provide time for the employee to recover,” David Lewis, founder and chief executive officer of the HR consulting firm OperationsInc., said in an email.

Devine, who represents employers, has encountered cases where employees don’t want to disclose that they are undergoing a medical procedure because they fear it will impact their ability to do their job.

In one instance, an employee with a physically demanding job did not tell his bosses he was going to have knee replacement surgery. Instead, he used two weeks of paid time off. “He didn’t want to signal a problem,” Devine said.

While the employee thought he would be able to go back to his regular duties after two weeks, “of course it didn’t work that way,” Devine said.

If an employee acknowledges that a medical situation might hinder their ability to do their job, “in a lot of situations, the underlying condition is a disability,” which would qualify for ADA accommodations, Devine added.

For HR professionals, Devine said there should be “some desire to give privacy,” rather than trying to force employees to disclose information.

The issue often arises in cases where employees tell their employer that they are sick and then seemingly disappear, and it turns out they are in inpatient psychiatric care or rehabilitation for drug or alcohol use. Yet both of these instances may be covered by the ADA and employees may be within their right to request an accommodation.

If the person who requires hospitalization or has a major medical condition is a higher-ranking employee, it triggers even greater concerns.

“The more important the role the employee plays at the company, the more impactful their absence becomes,” Lewis said. “As for Lloyd Austin, I would make the argument that in his very public, very critical world stage role, the above rules cannot apply. At a minimum he should have informed his superiors of his planned surgery, kept them apprised of his condition and availability. The same would be true for a key employee in a publicly traded firm.”

Neuberger said if a senior-level employee such as a chief executive officer or chief operating officer is hospitalized, nondisclosure is “a whole different issue,” compared to a rank-and-file employee.

He cites Apple co-founder and CEO Steve Jobs’ limited disclosure of his health issues in the 2000s and 2010s, which triggered an investigation by the U.S. Securities and Exchange Commission of how the disclosures were handled.

In Neuberger’s view, maintaining secrecy when a high-ranking executive is ill “is a breach of trust. There’s a fiduciary duty of a company to disclose it.”

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