

In case of dispute, the path to resolution usually leads through a court-appointed medical assessment. (Symbolic image: Adobe Stock)



Right

December 4, 2025 | Andrea Florin

Sick employees: twice sick, twice protected from dismissal

The column by the law firm Lalive in Zurich provides answers to legal questions that Swiss SMEs may or should be concerned about.

If an employee becomes ill, the employer is prohibited from terminating their employment for a certain period. If the employer has already terminated the employment, the notice period is suspended for a certain duration during the sick leave. This period is called the waiting period.

The waiting period depends on the length of service and lasts 30 days in the first year, 90 days from the second to the fifth year inclusive, and 180 days from the sixth year onwards. It only applies after the probationary period has ended.

Evidence and role of the medical advisor

When a new blocking period begins

A worsening of the same illness, including the appearance of new symptoms or complaints, or a relapse, does not trigger an additional waiting period. However, in the case of several different illnesses, a second illness triggers a new waiting period. The Federal Supreme Court has reaffirmed this jurisprudence, as a recently published decision from August 2025 demonstrates. This Federal Supreme Court decision also illustrates the difficulties in determining whether a new illness is actually present or whether there is a connection to a pre-existing condition.

When does a new suspension period begin – and when is it merely a relapse? A federal court ruling shows how complex this question is in everyday working life.

The underlying dispute

The employee had been with the employer since 2009, most recently as a regional sales manager. Following a heart attack in May 2018, he was on full sick leave until July 31, 2018, and on 50% sick leave between August 1 and August 31, 2018. The heart attack triggered a 180-day waiting period.

On August 21, 2018, the employer presented the employee with a supplementary agreement to the employment contract, which was intended to change his salary and responsibilities. The employee rejected this and was on 100% sick leave from the following day until February 28, 2019, due to depression and anxiety. Subsequently, the employer and employee also disputed commission payments, which is why the employee filed a conciliation request against the employer on November 22, 2018, for payment of commissions.

On November 29, 2018, the employer terminated the employee's employment effective February 28, 2019, while the employee was still on sick leave due to depression and anxiety. The 180-day waiting period for sick leave due to the heart attack had already expired at that time, and the employer maintained that the depression was a consequence of the heart attack and not a new illness. Therefore, no new waiting period had been triggered. However, the employee argued that the depression had been caused by the workplace dispute, rendering the termination invalid.

As a precautionary measure, the employer terminated the employee's contract again on March 15, 2019, after the new 180-day waiting period, which began with the depression, had expired.

The ruling of the Federal Court

Both the cantonal courts and the Federal Supreme Court considered the depression to be a distinct illness triggered by the workplace conflict. The dismissal of November 29, 2018, therefore, occurred during a protected period and was thus invalid. The courts based their decision on the testimony of the employee's treating physician in the first instance, even though the employer had submitted reports from three other doctors as evidence, who identified the heart attack as the cause of the depression.

Only the termination notice issued on March 15, 2019, which was issued purely as a precautionary measure, legally ended the employment relationship.

Conclusion and recommendation



Attorney Andrea Florin is a certified specialist in employment law (SAV) and specializes in advising and representing clients in (mostly contentious) commercial law matters, with a focus on employment law. She is Counsel at the [commercial law firm Lalive](#) , which advises companies, public authorities, and private individuals from its offices in Zurich, Geneva, and London on complex, predominantly international matters and, above all, disputes.