

LEGAL NEWSLETTER

CAN FAKE MEDICAL CERTIFICATE ("MC") BE CONSTRUED AS OFFENCE UNDER THE MALAYSIAN LAW?

NADIMUTHU v PUBLIC PROSECUTOR [1974] 1 MLJ 20 FEDERAL COURT

a. Relevant Facts:

- i. The Appellant in this case was an employee of the Malayan Railways.
- ii. The Appellant had been charged and convicted of knowingly using with intent to deceive his employer, sick certificates which contained statements false in material particulars, which to his knowledge was intended to deceive his employers, constituting offences under Prevention of Corruption Act, 1961 (now known as the Malaysian Anti-Corruption Commission Act 2009).
- iii. The offence now falls under Section 18 of the MACC Act 2009, which states as such:

"A person commits an offence...with intent to deceive his principal, any receipt, account or other document in respect of which the principal is interested, and which he has reason to believe contains any statement which is false or erroneous...and is intended to mislead the principal."

b. Decision:

The Appellant was fined for the fake MC taken by him.

"These certificates were clearly used to claim monetary benefits to which the applicant was not entitled. We would answer the question reserved in the affirmative, and confirm the judgment of the learned judge dismissing the applicant's appeal against conviction and sentence"

CAN EMPLOYER FIRE THE STAFF FOR MISCONDUCT OF FAKE MC?

Section 60F of the Employment Act 1955 states as such:

"(1) An employee shall, after examination at the expense of the employer...be entitled to paid sick leave...where no hospitalization is necessary."

Every employee is entitled to a minimum of 14 days of sick leave per year (If you've worked less than 2 years). The total number of sick leaves you can take would increase over the years you work. The Act further states that you need to get an MC from the doctor in order to apply for sick leave.

However, if you take MC without actually being sick—and your company comes to know about it, they can fire you for misconduct. Section 14 of the Employment Act 1955 states as such:

Section 14 of the Employment Act (in part)"

An employer may, on the grounds of misconduct inconsistent with the fulfilment of the express or implied conditions of his service, after due inquiry—

- a. dismiss without notice the employee;
- b. downgrade the employee; or
- c. impose any other lesser punishment as he deems just and fit, and where a punishment of suspension without wages is imposed, it shall not exceed a period of two weeks."

KEY TAKEAWAYS

- a) Sijil sakit palsu oleh pekerja adalah satu kesalahan di bawah Seksyen 18, Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009. Dengan rujukan silang kepada Seksyen 24(2) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009, jika tertuduh didapati bersalah oleh Mahkamah, tertuduh boleh disabitkan seperti berikut:

I. penjara selama tempoh tidak melebihi dua puluh tahun; atau

II. denda tidak kurang daripada lima kali ganda jumlah atau nilai butiran material yang palsu atau salah atau rosak, jika butiran material yang palsu atau salah atau cacat itu boleh dinilai, atau bersifat kewangan, atau sepuluh ribu ringgit, yang mana lebih tinggi.

- b) From the Employment Act 1955, Fake MC by the employee is consider as serious offence which the company requires no notice period under the Act to fire the employee under the dismissal of misconduct.

Note: In the event there is inconsistency between the Malay Language text and the English text, the English Language text shall prevail.

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