



## RESIGNATION OR DISMISSAL?

A recent EAT (Employment Appeals Tribunal) case highlighted the dangers of assuming that an employee has left your employment therefore there is nothing further to do.

In this particular case an employee had been off sick and then simply failed to return to work after his medical certificates had run out. The employer argued that there could have been no real dismissal at all, let alone unfair dismissal, because by failing to return to work after recovering from his sickness the employee had repudiated his employment contract.

The EAT disagreed. It is settled law that repudiation of a contract is only effective when accepted by the other party. (i.e. Don't just sit back and do nothing and assume that they have left!) The employer in this case had never formally accepted the repudiation so the EAT ruled that the contract had continued and the employee was entitled to proceed with his claim for unfair dismissal.

To prevent this possibility the employer should as soon as possible after becoming aware that the employee has recovered and has not returned to work inform him that his continued absence will be treated as "repudiation" of their employment contract.

If the employee fails to respond (as often happens) then a further letter should be sent giving a deadline by which time, if the employees continues to fail to respond, the contract will be considered to have been repudiated. Alternatively you can go down the disciplinary route by treating the failure to contact the organisation and to submit medical certificates or another acceptable reason for the continued absence as gross misconduct. In such a case at least two opportunities to attend a disciplinary hearing must be given, followed by the decision to dismiss highlighting the right of appeal.

For more information and advice on how the HR Dept. Ltd can help you 'Prevent People Problems' call the team on 0870 240 1919 or email [info@hrdept.co.uk](mailto:info@hrdept.co.uk)

