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Declaration of permanent incapacity What do you need to know as an employee?

An employee and an employer may only invoke medical force majeure to terminate the employment contract when the employee is permanently unfit for the agreed work and the **specific procedure provided for in Article 34 of the Employment Contracts Act** has been completed, as described in Article I.4-82/1 of the Code on Well-being at Work.

When can this procedure be initiated?

Both the employee and the employer may initiate the specific procedure provided that:

- no **reintegration process** is currently **underway** in the company for the employee concerned;
- the employee is **unfit for work for an uninterrupted period of at least six months**. A return to work (full or part-time) for less than 14 days does not interrupt the period of incapacity for work.

How to proceed

You initiate the procedure by sending a **notification** to the occupational physician **to determine whether it is permanently impossible for you to perform the agreed work**.

This request must be sent **by registered post** to the occupational physician and to the other party.

Our reintegration coordinators have a template request form available.

During this procedure, you can be assisted by your company's trade union representative.

Examination to determine permanent unfitness for the agreed work

Once the notification has been received, you will be invited to attend an examination. This examination may take place no earlier than 10 calendar days after the notification.

If the doctor deems it necessary, your workplace may be examined.

If you agree, the occupational physician may also consult your general practitioner, the doctor who issued the medical certificate and/or the medical adviser.

During the examination, you can ask the occupational physician to consider the possibility of adapted work or other work if it is established that you can no longer perform the agreed work.

What happens if you do not attend the examination?

If you decline the invitation three times within a three-month period, with an interval of at least 14 calendar days between each invitation, the occupational physician will inform your employer that they cannot determine whether you are permanently unfit for the agreed work.

What can the occupational physician determine and within what time frame?

The occupational physician will inform you of their decision on the **permanent unfitness form**, which will be sent to you and your employer **by registered post**. This form must be received no later **than three months after receipt of the notification**.

The possible findings are:

- You **are not permanently unfit** for the agreed work.
- You **are permanently unfit for the agreed work and you have not asked** your employer to consider the possibility of adapted work or other work.
- You **are permanently unfit for the agreed work and have asked** your employer to consider the possibility of adapted work or other work. The occupational physician will indicate the conditions and arrangements for adapted work/other work.

If the occupational physician finds that you are permanently unable to perform the agreed work, they will also communicate this finding to the medical adviser.

What are your options for appealing against the occupational physician's findings?

Appeal against the decision of unfitness

You can appeal against the occupational physician's decision **only** if it has been determined that you are **permanently unfit for the agreed work**.

You must then follow the same appeal procedure as that provided for in the context of a reintegration process.

How? By sending a registered letter to the social inspector within 21 calendar days of the day after receiving the form. In this case, you must also inform your employer of this appeal by registered letter. The social inspector will then consult with the occupational physician and your attending physician, and a decision will be made within 42 calendar days from the day after the medical inspector received the appeal request.

Possibility of requesting a review of the conditions/terms of adapted work

If you are permanently unfit for the agreed work and you did NOT request during the examination that the conditions and terms of other or adapted work be examined, you can still change your mind.

How? Send a registered letter to the occupational physician requesting a review of the conditions and terms of adapted/other work, stating the reasons for this request. This request must also be sent to the employer by registered letter. This must be done within seven calendar days of receiving the findings.

Consequences:

- If necessary, you will be invited to a review of the conditions and terms of adapted or other work.
- A form confirming permanent unfitness for work, setting out the conditions and arrangements for adapted work/other work, will be sent to the employer and the employee no later than 30 calendar days after receipt of the employee's request.

What are the possible consequences if it is found that you are not permanently unfit for the agreed work?

The specific procedure will be terminated and medical force majeure cannot be invoked.

A new specific procedure for determining permanent incapacity can only be initiated once you have been continuously unable to work for a period of six months, starting from the day after receipt of the occupational physician's report. You may be able to initiate a reintegration process.

What happens if you have been found to be permanently unfit for the agreed work and you have requested that the possibilities for adapted work/other work be examined?

In order to determine the possibilities for adapted work/other work, the occupational physician may:

- With the worker's consent, **consult with other parties** such as:
 - o your GP,
 - o prevention advisers specialising in other areas such as ergonomics, psychosocial aspects, etc.
 - o your employer, with a view to promoting the search for concrete work opportunities adapted to your state of health,
 - o ...
- **Examine the workstation** with a view to possible adjustments or ask a prevention advisor who is more specialised in your health problems.

Your employer must follow the procedure set out in the reintegration process to assess whether other or adapted work can be offered to you. They will consult with you and the occupational physician to examine the specific possibilities. They may also consult with other people who can contribute to the success of the reintegration process.

At the end of the consultation, it is determined that:



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- Either adapted work/other work is possible and a reintegration plan must be drawn up by the employer and sent to you for approval.
- Or there are no possibilities for adapted/other work within the company. The employer must then draw up a reasoned report and send it to you.

When can your employer terminate your contract on the grounds of medical force majeure?

In order to **terminate the employment contract** on the grounds of **medical force majeure**, the following conditions must be met:

- The occupational physician must have confirmed that you are permanently unfit to perform the agreed work.
- Your options for appeal have been exhausted.

AND:

- You have not requested to explore the possibilities of adapted work/other work
OR
- You have requested to explore the possibilities of adapted work/other work, but your employer has justified in a report why other or adapted work could not be offered
OR
- You requested that adapted work/other work be considered, but you refused the reintegration plan proposed by your employer.

Who is responsible for the costs associated with this procedure?

The costs are borne **by the employer**, regardless of who submitted the notification.

Contact details Reintegration coordinators	
Postcodes	Email addresses
1000 - 1999 AND 3000 - 3499	ri-brussel@securex.be
2000 - 2999 AND 3500 - 3999	ri-antwerpen@securex.be
4000 - 7699 AND 7800 - 7999	ri-wallonie@securex.be
7700 - 7799 AND 8000 - 8999	ri-kortrijk@securex.be
9000 - 9999	ri-gent@securex.be