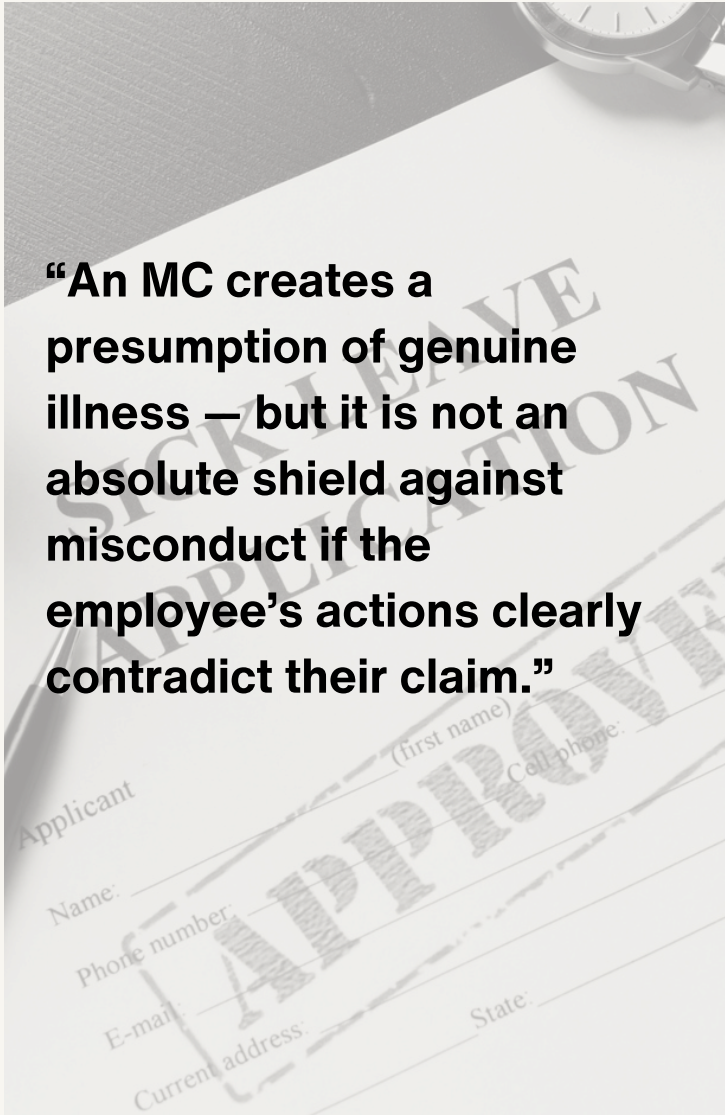


PERSPECTIVES

SICK LEAVE OR STRATEGIC LEAVE?

UNDERSTANDING MALINGERING IN THE WORKPLACE

In today's hybrid and fast-paced work environment, managing employee absenteeism remains a challenge, especially when sick leave is taken frequently and suspiciously. Employers often notice patterns: absences only on Mondays or Fridays, sick leave following rejected annual leave requests, or sudden MCs during peak project periods. While these employees may produce valid Medical Certificates (MCs), the underlying concern is whether the illness is genuine or a form of ***malinger***.



“An MC creates a presumption of genuine illness — but it is not an absolute shield against misconduct if the employee’s actions clearly contradict their claim.”

Malingering refers to the act of feigning illness or injury to avoid work responsibilities. It undermines trust, disrupts team productivity, and erodes the employer-employee relationship, which is built on mutual honesty and accountability.

The Malaysian Industrial Relations (IR) Court has consistently treated malingering as a form of misconduct, and in repeated cases, as gross misconduct warranting dismissal. However, employers must tread carefully, especially when an MC is involved. Below are two (2) recent separate findings provided by the IR Court on Malingering:



1. Che Zamberi Che Ani v MAB Kargo Sdn Bhd [2025] ILJU 56

An employee on extended medical leave was found engaging in physically demanding activities such as playing sepak takraw and cutting trees. The Industrial Court ruled that this violated the trust placed in the employee and upheld the dismissal, reinforcing that sick leave is for recovery instead of recreation.

2. Jolene Lee Miao Chi v Iflix Sdn Bhd [2021] ILJU 23

The employee was dismissed for allegedly abusing sick leave by attending a seminar. The Industrial Court found the dismissal unfair, noting that light activities (like picking up seminar notes) did not contradict the MC. The court emphasized that an MC creates a presumption of genuine illness, and employers must rebut it with credible evidence.

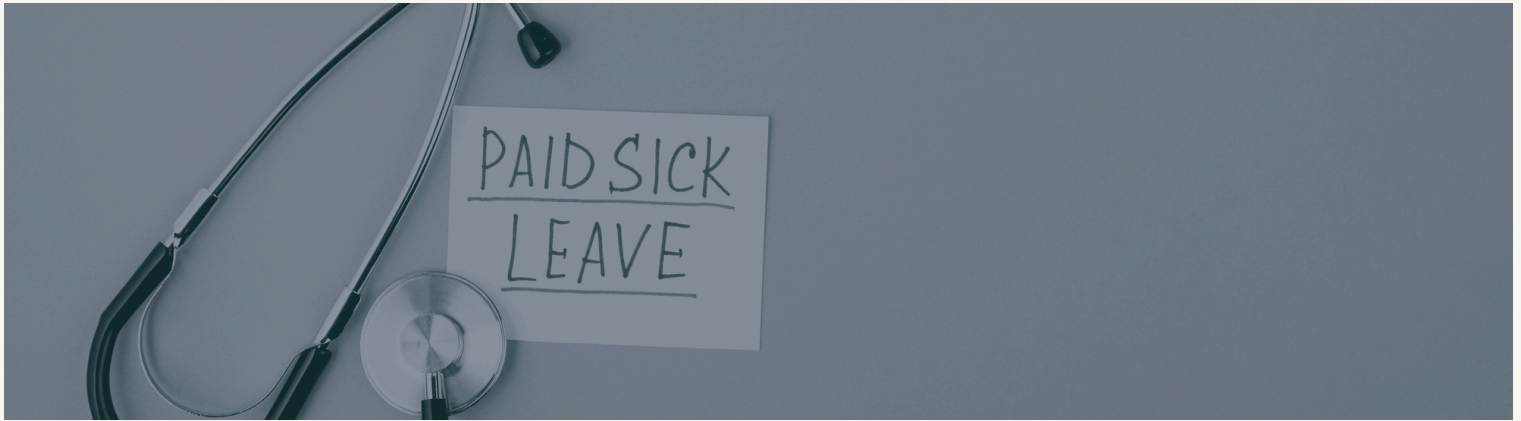


These cases reinforce that an MC is not an absolute shield, especially when the employee's conduct clearly contradicts the nature of their claimed illness. Moreover, the IR courts require employers to prove that the employee abused their sick leave entitlement. The presence of an MC creates a presumption of genuine illness, and without supporting evidence, disciplinary action may be deemed unfair.

With remote work and digital tools, malingering may manifest differently today, for example, employees calling in sick but actively engaging in freelance work or side gigs, MCs issued for minor ailments, yet the employee is seen attending social events or travelling.

Therefore, if you suspect malingering, consider these proactive steps:

- **Track Patterns:** Create a timeline of sick leave usage, noting frequency, timing, and any overlaps with rejected leave or key deadlines.
- **Digital Footprint:** Monitoring Public social media posts may reveal inconsistencies, ie vacation photos on Instagram during MC periods. While this must be handled sensitively, it can support an investigation.
- **Conduct Return-to-Work Interviews:** Brief check-ins after sick leave can help assess recovery and reinforce accountability.



Each case of suspected malingering must be assessed on its own merits. Employers should avoid assumptions and instead focus on evidence, consistency, and procedural fairness. When in doubt, seek legal advice before initiating disciplinary proceedings.

For tailored guidance on managing absenteeism and misconduct, feel free to reach out to E2 Consultants. We're here to help you navigate the complexities of modern workplace challenges.