

## Who may issue and sign medical certificates?

**Section 23 of the Basic Conditions of Employment Act 75 of 1997 (BCEA)** deals with proof of incapacity and states:

*“(1) An employer is not required to pay an employee in terms of section 22 if the employee has been absent from work for more than two consecutive days or on more than two occasions during an eight-week period and, on request by the employer, does not produce a medical certificate **stating that the employee was unable to work for the duration of the employee’s absence on account of sickness or injury.***

*(2) The medical certificate **must be issued and signed by a medical practitioner** or any other person who is **certified to diagnose and treat patients** and who is **registered with a professional council** established by an **Act of Parliament.**”*

From this section of the BCEA, it is clear that there are two requirements in order for a medical certificate to be a valid medical certificate:

- It must state that the employee was unable to perform his/her normal duties as a result of illness (or an injury) and must be based on the professional opinion of the medical practitioner.
- The second requirement is that the certificate must be issued by a medical practitioner.

In other words, a certificate that states that the practitioner “saw the patient” or “was informed by the patient” is not considered to be a ‘valid’ medical certificate, in so far as this pertains to the purpose of section 23 of the BCEA, since the practitioner did not declare in his/her professional opinion that the employee was unable to perform his/her normal duties as a result of illness (or an injury). Such certificates are merely an indication that the practitioner saw the patient, for example for a check-up, or that s/he was informed that the patient was unfit for duty.

Some contracts of employment or specific conditions may also require that an employee produce a medical certificate in certain circumstances, for example, if the employee has been warned about the abuse of sick leave on Mondays or on a day following or before a Public Holiday or a weekend, or a pay day.

## What is the definition of a medical practitioner?

A medical practitioner is described in the definitions of the Basic Conditions of Employment Act as:

*“ . . . a person entitled to practise as a medical practitioner in terms of **section 17 of the Medical, Dental and Supplementary Health Service Professions Act 56 of 1974**”*

In terms of this Act, the following professionals are considered to be medical practitioners:

- Medical practitioners (Doctors) that are registered with the Health Professions Council of South Africa;
- Dentists that are registered with the Health Professions Council of South Africa;
- Psychologists with a Master’s Degree in Educational, Counselling or Clinical Psychology that are registered with the Health Professions Council of South Africa.

The above-mentioned Act makes reference to the **Allied Health Service Professions Act 63 of 1982.**

Practitioners mentioned in this Act must be registered with the Allied Health Service Professions Council in order to issue medical certificates. Employers must accept medical certificates from such practitioners as proof of incapacity in terms of the Basic Conditions of Employment Act.

A practitioner is defined in terms of the aforementioned Act as a person registered as an:

- Acupuncturist;
- Ayurveda Practitioner;
- Chinese medicine Practitioner;
- Chiropractor;
- Homeopath;
- Naturopath;
- Osteopath;
- Phytotherapist; or
- Unani-Tib Practitioner.

Proof or registration may be requested by the employer.

In terms of case law, a certificate from a traditional healer may also be acceptable. The World Health Organisation defines traditional medicine as follows: “It is the sum total of the knowledge, skill, and practices based on the theories, beliefs, and experiences indigenous to different cultures, whether explicable or not, used in the maintenance of health as well as in the prevention, diagnosis, improvement or treatment of physical and mental illness.” ([https://www.who.int/health-topics/traditional-complementary-and-integrative-medicine#tab=tab\\_1](https://www.who.int/health-topics/traditional-complementary-and-integrative-medicine#tab=tab_1) Date of access: 28 March 2021).

The Supreme Court of Appeal (SCA) in *Kivietz Kroon Country Estate (Pty) Ltd v Mmoledi & others* [2014] 3 BLLR 207 (SCA); [2014] 35 ILJ 209 (SCA) (29 November 2013), stated that courts (also applicable to employers) should evaluate the sincerity of the person’s belief in religious doctrine or cultural practices as opposed to that employee using such beliefs, cultural practice, or religious doctrine for ulterior motives. It is not the role of the Courts or of employers to “evaluate the acceptability, logic, consistency or comprehensibility of the belief.” Thus, employers are called to manage situations where employees rely on alternative forms of treatment such as that provided by Traditional Healers with sensitivity and to rather seek advice when unsure of how to manage situations purportedly arising from a religious doctrine or cultural practice or belief.