

Traditional Healers: Belief vs Law



A subject often considered a grey area involving confusion and debate is the question of Traditional Healers and the role they play in providing medical certificates to employees who seek traditional medical assistance, rather than conventional medical treatment.

The main question facing employers countrywide is therefore whether *medical certificates* issued by traditional healers are acceptable and valid. To answer this question, one must assess the conflict between beliefs and legislation, as well as the importance of traditional healers in our communities.

The importance of Traditional Healers

When evaluating the importance of traditional healers in predominantly traditional communities across South Africa, the following must be considered:

- Eighty percent of South Africans consult traditional healers and there are more than 200 000 traditional healers. Most of them are based in rural areas.
- Many South Africans still use traditional medicine for their primary healthcare needs. This is because traditional healthcare practitioners are often more accessible and affordable. They are familiar with the community and their cultural practices and beliefs.
- Most rural villages in South Africa continue to have resident traditional healers. Some of these villages even have large traditional markets that remain functional, such as Mona Market in Nongoma, KwaZulu-Natal.
- Traditional health practice isn't relegated to rural areas only. It is widely practised in major cities such as Durban and Johannesburg. Due to demand, some municipalities have donated infrastructure for the healers to practise and sell their traditional medicine.

What constitutes an acceptable and valid medical certificate?

According to *section 23(2) of the Basic Conditions of Employment Act 75 of 1997, as amended ("the BCEA")*, the following requirements have to be met in order for a medical certificate to be acceptable and valid:

- The medical certificate must be issued and signed by a medical practitioner or any other person certified to diagnose and treat patients; and
- The medical practitioner or other certified person must be registered with a professional council established by an Act of Parliament.

When can a traditional healer issue an acceptable and valid medical certificate?

Bearing in mind that *section 23 of the BCEA* and *section 1 of the Traditional Health Practitioners Act 22 of 2007 ("the THPA")* have now established that traditional healers fall within the category of a person certified to diagnose and treat patients. With the President signing the Traditional Health Practitioners Act, traditional healers were instructed to register with the Traditional Health Practitioners Council as of 1 May 2015. Registration with the said council will render medical certificates issued by traditional healers acceptable and valid.

After registration with the Traditional Health Practitioners Council of South Africa, the traditional healer must also meet the requirements for payment of sick leave as in the case of any other medical practitioner. Employers must note, however, that since the Traditional Health Practitioners Council (“the THPC”) was established, there has been neither an operational website nor a register containing the names and identities of all registered traditional healers in South Africa. In such circumstances it would be wise for employers to request the traditional healers to present proof of their registration with the aforementioned council.

Should traditional healers’ medical certificates be accepted in the workplace?

When deliberating whether traditional healers’ medical certificates are acceptable and valid, employers were urged by the Labour Appeal Court to note that the Constitution recognises traditional beliefs and practices; therefore, employers should also accept these beliefs. This point of view was established in the case of ***Kiviets Kroon Country Estate (Pty) Ltd v Mmoledi & others [LAC] JA78/10***.

When assessing this case, it is important to note that the judgement did not declare that all medical certificates issued by traditional healers are acceptable and valid in terms of section 23 of the BCEA. This judgement rather suggests that employers should apply a sensitive approach to medical certificates issued by traditional healers and consider which options were available to employees pertaining to the type of medical assistance best suited to their circumstances, rather than outright rejecting said medical certificates.

Therefore, based on this judgement, **employers can no longer simply reject medical certificates issued by traditional healers, without an investigation and valid reasons.**

In conclusion

In conclusion, the above highlights the conflict between belief and law, which creates uncertainty regarding appropriate action to be taken by employers. However, bearing in mind the relevant case law and legislation, the following options are available to employers:

- **Option 1** – Employers can focus on the legal aspects of what is required for a medical certificate issued by a traditional healer to be valid. If any requirements in terms of the Traditional Health Practitioners Act, in conjunction with the BCEA, are not met, employers can reject medical certificates issued by the participating traditional healers and implement unpaid leave for the days the employees were absent. Please note that if the employees submit any form of medical certificate issued by traditional healers, such employees would at least have proven where they were during their absence, in which case disciplinary action would not be recommended.
- **Option 2** – Employers can use their discretion, and if employees submit any form of medical certificate issued by traditional healers, may grant these employees *sick leave* in support of their traditional beliefs and right to exercise their discretion regarding which form of medical assistance best suits their circumstances.

We suggest that employers consider each case on its own merits while ensuring that employees rights are protected and that employees are treated in a fair and reasonable manner. Blanket refusal of sick notes by traditional healers is not recommended.

SERR Synergy guides and assists businesses in a practical and supportive way regarding the required processes and procedures to ensure labour legislation compliance and to minimise their exposure to risk when employing staff.

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The following sources are acknowledged:

- Basic Conditions of Employment Act 75 of 1997
- Traditional Health Practitioners Act 22 of 2007
- Kiviets Kroon Country Estate (Pty) Ltd v Mmoledi & others [LAC] JA78/10).

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